SA 4948. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4949. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4950. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4951. Mr. DODD proposed an amendment to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra.

SA 4952. Mr. INOUYE submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4953. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4954. Mr. REID (for Ms. CANTWELL (for herself, Mr. GRASSLEY, Mr. ENZI, and Mr. KOHL)) proposed an amendment to the bill S. 1742, to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes.

SA 4955. Mr. REID (for Mr. HELMS (for himself and Mr. LEAHY)) proposed an amendment to the bill H.R. 5469, To amend title 17, United States Code, with respect to the statutory license for webcasting.

SA 4956. Mr. REID (for Mr. HAGEL (for himself, Mr. BIDEN, and Mr. HELMS)) proposed an amendment to the bill S. 2712, to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

SA 4957. Mr. REID (for Mr. KERRY (for himself, Mr. BROWNBACK, and Mr. HOLLINGS)) proposed an amendment to the bill S. 2869, to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

SA 4958. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, Mr. HOLLINGS, and Mr. FRIST)) proposed an amendment to the bill H.R. 4664, An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes.

SA 4959. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, and Mr. HOLLINGS)) proposed an amendment to the bill H.R. 4664, supra.

SA 4960. Mrs. CLINTON (for herself, Mr. FITZGERALD, Ms. CANTWELL, and Mr. SPECTER) proposed an amendment to the bill H.R. 3529, to provide tax incentives for economic recovery and assistance to displaced workers.

SA 4961. Mr. REID (for Mr. BAUCUS) proposed an amendment to the bill H.R. 5557, to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

TEXT OF AMENDMENTS

SA 4906. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. INTEROPERABILITY OF INFORMATION SYSTEMS.

(a) DEFINITION.—In this section, the term ''enterprise architecture''—

(1) means—

(A) a strategic information asset base, which defines the mission;

(B) the information necessary to perform the mission;

(C) the technologies necessary to perform the mission; and

(D) the transitional processes for implementing new technologies in response to changing mission needs; and

(2) includes—

(A) a baseline architecture;

(B) a target architecture; and

(C) a sequencing plan.

(b) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall—

(1) endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable;

(2) in furtherance of paragraph (1), oversee and ensure the development and implementation of an enterprise architecture for Department-wide information technology, with timetables for implementation;

(3) as the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture under paragraph (2); and

(4) report to Congress on the development and implementation of the enterprise architecture under paragraph (2) in—

(A) each implementation progress report required under this Act; and

(B) each biennial report required under this Act.

(c) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—

(1) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall develop—

(A) a comprehensive enterprise architecture for information systems, including communications systems, to achieve interoperability between and among information systems of agencies with responsibility for homeland security; and

(B) a plan to achieve interoperability between and among information systems, including communications systems, of agencies with responsibility for homeland security and those of State and local agencies with responsibility for homeland security.

(2) TIMETABLES.—The Director of the Office of Management and Budget, in consultation with the Secretary and affected entities, shall establish timetables for development and implementation of the enterprise architecture and plan under paragraph (1).

(3) IMPLEMENTATION.—The Director of the Office of Management and Budget, in consultation with the Secretary and acting under the responsibilities of the Director under law (including the Clinger-Cohen Act of 1996), shall—

(A) ensure the implementation of the enterprise architecture developed under paragraph (1)(A); and

(B) coordinate, oversee, and evaluate the management and acquisition of information technology by agencies with responsibility for homeland security to ensure interoperability consistent with the enterprise architecture developed under subsection (1)(A).

(4) UPDATED VERSIONS.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall oversee and ensure the development of updated versions of the enterprise architecture and plan developed under paragraph (1), as necessary.

(5) REPORT.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall annually report to Congress on the development and implementation of the enterprise architecture and plan under paragraph (1).

(6) CONSULTATION.—The Director of the Office of Management and Budget shall consult with information systems management experts in the public and private sectors, in the development and implementation of the enterprise architecture and plan under paragraph (1).

(7) PRINCIPAL OFFICER.—The Director of the Office of Management and Budget shall designate, with the approval of the President, a principal officer in the Office of Management and Budget, whose primary responsibility shall be to carry out the duties of the Director under this subsection.

(d) AGENCY COOPERATION.—The head of each agency with responsibility for homeland security shall fully cooperate with the Director of the Office of Management and Budget in the development of a comprehensive enterprise architecture for information systems and in the management and acquisition of information technology consistent with the comprehensive enterprise architecture developed under subsection (c).

(e) CONTENT.—The enterprise architecture developed under subsection (c), and the information systems managed and acquired under the enterprise architecture, shall possess the characteristics of—

(1) rapid deployment;

(2) a highly secure environment, providing data access only to authorized users; and

(3) the capability for continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

SA 4907. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, line 13, insert ''and in accordance with an information systems interoperability architecture or other requirements developed by the Office of Management and Budget,'' after ''Department,''.

SA 4908. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for

other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . REQUIREMENT TO BUY CERTAIN ARTICLES FROM AMERICAN SOURCES.

(a) REQUIREMENT.—Except as provided in subsections (c) through (g), funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing;

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Specialty metals, including stainless steel flatware.

(3) Hand or measuring tools.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Homeland Security determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) or specialty metals (including stainless steel flatware) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by an establishment located outside the United States for the personnel attached to such establishment.

(e) EXCEPTION FOR SPECIALTY METALS AND CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of title 10, United States Code.

(f) EXCEPTION FOR CERTAIN FOODS.—Subsection (a) does not preclude the procurement of foods manufactured or processed in the United States.

(g) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(h) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

(i) GEOGRAPHIC COVERAGE.—In this section, the term ''United States'' includes the possessions of the United States.

SA 4909. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 260, line 1, strike all through line 23 and insert the following:

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

SA 4910. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. Barkley, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 90, line 5, strike all through page 91, line 10.

SA 4911. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE XVIII—NONEFFECTIVE PROVISIONS

SEC. 1801. NONEFFECTIVE PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (i) through (xiv).

(2) Section 311(i).

(3) Subtitle G of title VIII.

(4) Section 871.

(5) Section 890.

(6) Section 1707.

(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

SA 4912. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security and for other purposes; which was ordered to lie on the table; as follows:

On page 244, line 14, beginning with the comma strike all through ''occur'' on line 16.

SA 4913. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; and follows:

On page 302, line 21, strike all through page 303, line 19.

SA 4914. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proosed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was orderd to lie on the table; as follows:

On page 280, line 8, strike all through page 281, line 8.

SA 4915. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 268, line 19, strike all through page 280, line 5.

SA 4916. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 477, line 11, strike all through line 16.

SA 4917. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 103, line 12, strike all through line 14.

SA 4918. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 482, line 22, strike all through page 484, line 12.

SA 4919. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM) for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 60, line 8, strike all through ''(5 U.S.C. App.))'' on line 9.

SA 4920. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, strike line 13 and insert the following:

(19) On behalf of the Secretary, subject to disapproval by the President, to direct the agencies described under subsection (f)(2) to provide intelligence information, analyses of intelligence information, and such other intelligence-related information as the Assistant Secretary for Information Analysis determines necessary.

(20) To perform such other duties relating to

SA 4921. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

''CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

''Sec.
''9701. Establishment of human resources management system by the Secretary.
''9702. Establishment of human resources management system by the President.

''§ 9701. Establishment of human resources management system by the Secretary

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part, as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

''(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that

they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be fully consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section and section 9702) shall cease to be available.

''§ 9702. Establishment of human resources management system by the President

The authority under section 9701 to establish a human resources management system shall be exercised only when the President issues an order determining that—

''(1) the affected agency or subdivision has, as a primary function, intelligence, counterintelligence, investigative, or national security work;

''(2) the provisions of chapter 43, 51, 53, 71, 75, or 77 cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations;

''(3) the mission and responsibilities of the affected agency or subdivision have materially changed; and

''(4) a majority of the employees within that agency or subdivision have, as their primary duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

''97. Department of Homeland Security ..... 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 842. LABOR-MANAGEMENT RELATIONS.

(a) EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the President may issue an order excluding any executive agency, or subdivision thereof, from coverage under chapter 71 of title 5, United States Code, if the President determines that—

(A) the agency or subdivision has, as a primary function, intelligence, counterintelligence, investigative, or national security work; and

(B) the provisions of such chapter 71 cannot be applied to that agency or subdivision in a matter consistent with national security requirements and considerations.

(2) ADDITIONAL DETERMINATION.—In addition to the requirements under paragraph (1), the President may issue an order excluding any executive agency, or subdivision thereof, transferred to the Department under this Act, from coverage under chapter 71 of title 5, United States Code, only if the President determines that—

(A) the mission and responsibilities of the agency or subdivision materially change; and

(B) a majority of the employees within such agency or subdivision have, as their primary duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(3) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) or (2) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of title 5, United States Code; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—Each unit, which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department under this Act, continue to be so recognized for such purposes, unless—

(1) the mission and responsibilities of the personnel in such unit (or subdivision), or the threats of domestic terrorism being addressed by the personnel in such unit (or subdivision), materially change; and

(2) a substantial number of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(c) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

SA 4922. Mr. JEFFORDS (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM, (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 36, strike line 5 and all that follows through page 48, line 16, and insert the following:

Subtitle B—Protection of Voluntarily Furnished Confidential Information

SEC. 211. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT ACT of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SA 4923. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 145, strike line 16 and all that follows through page 148, line 5.

SA 4924. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 200, strike line 3 and all that follows through page 208, line 7, and insert the following:

SEC. 501. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

SEC. 502. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

SEC. 503. USE OF COMMERCIALLY AVAILABLE TECHNOLOGY, GOODS, AND SERVICES.

It is the sense of Congress that—

(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department's information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and

(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

SA 4925. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 208, between lines 7 and 8, insert the following:

Subtitle B—First Responder Terrorism Preparedness

SEC. 5___1. SHORT TITLE.

This subtitle may be cited as the ''First Responder Terrorism Preparedness Act of 2002''.

SEC. 5___2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Federal Government must enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(2) as a result of the events of September 11, 2001, it is necessary to clarify and consolidate the authority of the Federal Emergency Management Agency to support first responders.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to establish within the Federal Emergency Management Agency the Office of National Preparedness;

(2) to establish a program to provide assistance to enhance the ability of first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

(3) to address issues relating to urban search and rescue task forces.

SEC. 5___3. DEFINITIONS.

(a) MAJOR DISASTER.—Section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) is amended by inserting ''incident of terrorism,'' after ''drought),''.

(b) WEAPON OF MASS DESTRUCTION.—Section 602(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(a)) is amended by adding at the end the following:

''(11) WEAPON OF MASS DESTRUCTION.—The term 'weapon of mass destruction' has the meaning given the term in section 2302 of title 50, United States Code.''.

SEC. 5___4. ESTABLISHMENT OF OFFICE OF NATIONAL PREPAREDNESS.

Subtitle A of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196 et seq.) is amended by adding at the end the following:

''SEC. 616. OFFICE OF NATIONAL PREPAREDNESS.

''(a) IN GENERAL.—There is established in the Federal Emergency Management Agency an office to be known as the 'Office of National Preparedness' (referred to in this section as the 'Office').

''(b) APPOINTMENT OF ASSOCIATE DIRECTOR.—

''(1) IN GENERAL.—The Office shall be headed by an Associate Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

''(2) COMPENSATION.—The Associate Director shall be compensated at the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(c) DUTIES.—The Office shall—

''(1) lead a coordinated and integrated overall effort to build, exercise, and ensure viable terrorism preparedness and response capability at all levels of government;

''(2) establish clearly defined standards and guidelines for Federal, State, tribal, and local government terrorism preparedness and response;

''(3) establish and coordinate an integrated capability for Federal, State, tribal, and

local governments and emergency responders to plan for and address potential consequences of terrorism;

''(4) coordinate provision of Federal terrorism preparedness assistance to State, tribal, and local governments;

''(5) establish standards for a national, interoperable emergency communications and warning system;

''(6) establish standards for training of first responders (as defined in section 630(a)), and for equipment to be used by first responders, to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

''(7) carry out such other related activities as are approved by the Director.

''(d) DESIGNATION OF REGIONAL CONTACTS.—The Associate Director shall designate an officer or employee of the Federal Emergency Management Agency in each of the 10 regions of the Agency to serve as the Office contact for the States in that region.

''(e) USE OF EXISTING RESOURCES.—In carrying out this section, the Associate Director shall—

''(1) to the maximum extent practicable, use existing resources, including planning documents, equipment lists, and program inventories; and

''(2) consult with and use—

''(A) existing Federal interagency boards and committees;

''(B) existing government agencies; and

''(C) nongovernmental organizations.''.

SEC. 5___5. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

(a) IN GENERAL.—Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) is amended by adding at the end the following:

''SEC. 630. PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.

''(a) DEFINITIONS.—In this section:

''(1) FIRST RESPONDER.—The term 'first responder' means—

''(A) fire, emergency medical service, and law enforcement personnel; and

''(B) such other personnel as are identified by the Director.

''(2) LOCAL ENTITY.—The term 'local entity' has the meaning given the term by regulation promulgated by the Director.

''(3) PROGRAM.—The term 'program' means the program established under subsection (b).

''(b) PROGRAM TO PROVIDE ASSISTANCE.—

''(1) IN GENERAL.—The Director shall establish a program to provide assistance to States to enhance the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction.

''(2) FEDERAL SHARE.—The Federal share of the costs eligible to be paid using assistance provided under the program shall be not less than 75 percent, as determined by the Director.

''(3) FORMS OF ASSISTANCE.—Assistance provided under paragraph (1) may consist of—

''(A) grants; and

''(B) such other forms of assistance as the Director determines to be appropriate.

''(c) USES OF ASSISTANCE.—Assistance provided under subsection (b)—

''(1) shall be used—

''(A) to purchase, to the maximum extent practicable, interoperable equipment that is necessary to respond to incidents of terrorism, including incidents involving weapons of mass destruction;

''(B) to train first responders, consistent with guidelines and standards developed by the Director;

''(C) in consultation with the Director, to develop, construct, or upgrade terrorism preparedness training facilities;

''(D) to develop, construct, or upgrade emergency operating centers;

''(E) to develop preparedness and response plans consistent with Federal, State, and local strategies, as determined by the Director;

''(F) to provide systems and equipment to meet communication needs, such as emergency notification systems, interoperable equipment, and secure communication equipment;

''(G) to conduct exercises; and

''(H) to carry out such other related activities as are approved by the Director; and

''(2) shall not be used to provide compensation to first responders (including payment for overtime).

''(d) ALLOCATION OF FUNDS.—For each fiscal year, in providing assistance under subsection (b), the Director shall make available—

''(1) to each of the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, $3,000,000; and

''(2) to each State (other than a State specified in paragraph (1))—

''(A) a base amount of $15,000,000; and

''(B) a percentage of the total remaining funds made available for the fiscal year based on criteria established by the Director, such as—

''(i) population;

''(ii) location of vital infrastructure, including—

''(I) military installations;

''(II) public buildings (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612));

''(III) nuclear power plants;

''(IV) chemical plants; and

''(V) national landmarks; and

''(iii) proximity to international borders.

''(e) PROVISION OF FUNDS TO LOCAL GOVERNMENTS AND LOCAL ENTITIES.—

''(1) IN GENERAL.—For each fiscal year, not less than 75 percent of the assistance provided to each State under this section shall be provided to local governments and local entities within the State.

''(2) ALLOCATION OF FUNDS.—Under paragraph (1), a State shall allocate assistance to local governments and local entities within the State in accordance with criteria established by the Director, such as the criteria specified in subsection (d)(2)(B).

''(3) DEADLINE FOR PROVISION OF FUNDS.—Under paragraph (1), a State shall provide all assistance to local government and local entities not later than 45 days after the date on which the State receives the assistance.

''(4) COORDINATION.—Each State shall coordinate with local governments and local entities concerning the use of assistance provided to local governments and local entities under paragraph (1).

''(f) ADMINISTRATIVE EXPENSES.—

''(1) DIRECTOR.—For each fiscal year, the Director may use to pay salaries and other administrative expenses incurred in administering the program not more than the lesser of—

''(A) 5 percent of the funds made available to carry out this section for the fiscal year; or

''(B)(i) for fiscal year 2003, $75,000,000; and

''(ii) for each of fiscal years 2004 through 2006, $50,000,000.

''(2) RECIPIENTS OF ASSISTANCE.—For each fiscal year, not more than 10 percent of the funds retained by a State after application of subsection (e) may be used to pay salaries and other administrative expenses incurred in administering the program.

''(g) MAINTENANCE OF EXPENDITURES.—The Director may provide assistance to a State under this section only if the State agrees to maintain, and to ensure that each local government that receives funds from the State in accordance with subsection (e) maintains, for the fiscal year for which the assistance is provided, the aggregate expenditures by the State or the local government, respectively, for the uses described in subsection (c)(1) at a level that is at or above the average annual level of those expenditures by the State or local government, respectively, for the 2 fiscal years preceding the fiscal year for which the assistance is provided.

''(h) REPORTS.—

''(1) ANNUAL REPORT TO THE DIRECTOR.—As a condition of receipt of assistance under this section for a fiscal year, a State shall submit to the Director, not later than 60 days after the end of the fiscal year, a report on the use of the assistance in the fiscal year.

''(2) EXERCISE AND REPORT TO CONGRESS.—As a condition of receipt of assistance under this section, not later than 3 years after the date of enactment of this section, a State shall—

''(A) conduct an exercise, or participate in a regional exercise, approved by the Director, to measure the progress of the State in enhancing the ability of State and local first responders to respond to incidents of terrorism, including incidents involving weapons of mass destruction; and

''(B) submit a report on the results of the exercise to—

''(i) the Committee on Environment and Public Works and the Committee on Appropriations of the Senate; and

''(ii) the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives.

''(i) COORDINATION.—

''(1) WITH FEDERAL AGENCIES.—The Director shall, as necessary, coordinate the provision of assistance under this section with activities carried out by—

''(A) the Administrator of the United States Fire Administration in connection with the implementation by the Administrator of the assistance to firefighters grant program established under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) (as added by section 1701(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (114 Stat. 1654, 1654A–360));

''(B) the Attorney General, in connection with the implementation of the Community Oriented Policing Services (COPS) Program established under section 1701(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(a)); and

''(C) other appropriate Federal agencies.

''(2) WITH INDIAN TRIBES.—In providing and using assistance under this section, the Director and the States shall, as appropriate, coordinate with—

''(A) Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) and other tribal organizations; and

''(B) Native villages (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) and other Alaska Native organizations.''.

(b) COST SHARING FOR EMERGENCY OPERATING CENTERS.—Section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c) is amended—

(1) by inserting ''(other than section 630)'' after ''carry out this title''; and

(2) by inserting ''(other than section 630)'' after ''under this title''.

SEC. 5___6. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 5___5(a)) is amended by adding at the end the following:

''SEC. 631. PROTECTION OF HEALTH AND SAFETY OF FIRST RESPONDERS.

''(a) DEFINITIONS.—In this section:

''(1) FIRST RESPONDER.—The term 'first responder' has the meaning given the term in section 630(a).

''(2) HARMFUL SUBSTANCE.—The term 'harmful substance' means a substance that the President determines may be harmful to human health.

''(3) PROGRAM.—The term 'program' means a program described in subsection (b)(1).

''(b) PROGRAM.—

''(1) IN GENERAL.—If the President determines that 1 or more harmful substances are being, or have been, released in an area that the President has declared to be a major disaster area under this Act, the President shall carry out a program with respect to the area for the protection, assessment, monitoring, and study of the health and safety of first responders.

''(2) ACTIVITIES.—A program shall include—

''(A) collection and analysis of environmental and exposure data;

''(B) development and dissemination of educational materials;

''(C) provision of information on releases of a harmful substance;

''(D) identification of, performance of baseline health assessments on, taking biological samples from, and establishment of an exposure registry of first responders exposed to a harmful substance;

''(E) study of the long-term health impacts of any exposures of first responders to a harmful substance through epidemiological studies; and

''(F) provision of assistance to participants in registries and studies under subparagraphs (D) and (E) in determining eligibility for health coverage and identifying appropriate health services.

''(3) PARTICIPATION IN REGISTRIES AND STUDIES.—

''(A) IN GENERAL.—Participation in any registry or study under subparagraph (D) or (E) of paragraph (2) shall be voluntary.

''(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

''(4) COOPERATIVE AGREEMENTS.—The President may carry out a program through a cooperative agreement with a medical or academic institution, or a consortium of such institutions, that is—

''(A) located in close proximity to the major disaster area with respect to which the program is carried out; and

''(B) experienced in the area of environmental or occupational health and safety, including experience in—

''(i) conducting long-term epidemiological studies;

''(ii) conducting long-term mental health studies; and

''(iii) establishing and maintaining environmental exposure or disease registries.

''(c) REPORTS AND RESPONSES TO STUDIES.—

''(1) REPORTS.—Not later than 1 year after the date of completion of a study under subsection (b)(2)(E), the President, or the medical or academic institution or consortium of such institutions that entered into the cooperative agreement under subsection (b)(4), shall submit to the Director, the Secretary of Health and Human Services, the Secretary of Labor, and the Administrator of the Environmental Protection Agency a report on the study.

''(2) CHANGES IN PROCEDURES.—To protect the health and safety of first responders, the President shall make such changes in procedures as the President determines to be necessary based on the findings of a report submitted under paragraph (1).''.

SEC. 5___7. URBAN SEARCH AND RESCUE TASK FORCES.

Subtitle B of title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197 et seq.) (as amended by section 5___6) is amended by adding at the end the following:

''SEC. 632. URBAN SEARCH AND RESCUE TASK FORCES.

''(a) DEFINITIONS.—In this section:

''(1) URBAN SEARCH AND RESCUE EQUIPMENT.—The term 'urban search and rescue equipment' means any equipment that the Director determines to be necessary to respond to a major disaster or emergency declared by the President under this Act.

''(2) URBAN SEARCH AND RESCUE TASK FORCE.—The term 'urban search and rescue task force' means any of the 28 urban search and rescue task forces designated by the Director as of the date of enactment of this section.

''(b) ASSISTANCE.—

''(1) MANDATORY GRANTS FOR COSTS OF OPERATIONS.—For each fiscal year, of the amounts made available to carry out this section, the Director shall provide to each urban search and rescue task force a grant of not less than $1,500,000 to pay the costs of operations of the urban search and rescue task force (including costs of basic urban search and rescue equipment).

''(2) DISCRETIONARY GRANTS.—The Director may provide to any urban search and rescue task force a grant, in such amount as the Director determines to be appropriate, to pay the costs of—

''(A) operations in excess of the funds provided under paragraph (1);

''(B) urban search and rescue equipment;

''(C) equipment necessary for an urban search and rescue task force to operate in an environment contaminated or otherwise affected by a weapon of mass destruction;

''(D) training, including training for operating in an environment described in subparagraph (C);

''(E) transportation;

''(F) expansion of the urban search and rescue task force; and

''(G) incident support teams, including costs of conducting appropriate evaluations of the readiness of the urban search and rescue task force.

''(3) PRIORITY FOR FUNDING.—The Director shall distribute funding under this subsection so as to ensure that each urban search and rescue task force has the capacity to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.

''(c) GRANT REQUIREMENTS.—The Director shall establish such requirements as are necessary to provide grants under this section.

''(d) ESTABLISHMENT OF ADDITIONAL URBAN SEARCH AND RESCUE TASK FORCES.—

''(1) IN GENERAL.—Subject to paragraph (2), the Director may establish urban search and rescue task forces in addition to the 28 urban search and rescue task forces in existence on the date of enactment of this section.

''(2) REQUIREMENT OF FULL FUNDING OF EXISTING URBAN SEARCH AND RESCUE TASK FORCES.—Except in the case of an urban search and rescue task force designated to replace any urban search and rescue task force that withdraws or is otherwise no longer considered to be an urban search and rescue task force designated by the Director, no additional urban search and rescue task forces may be designated or funded until the 28 urban search and rescue task forces are able to deploy simultaneously at least 2 teams with all necessary equipment, training, and transportation.''.

SEC. 5___8. AUTHORIZATION OF APPROPRIATIONS.

Section 626 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197e) is amended by striking subsection (a) and inserting the following:

''(a) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this title (other than sections 630 and 632).

''(2) PREPAREDNESS ASSISTANCE FOR FIRST RESPONDERS.—There are authorized to be appropriated to carry out section 630—

''(A) $3,340,000,000 for fiscal year 2003; and

''(B) $3,458,000,000 for each of fiscal years 2004 through 2006.

''(3) URBAN SEARCH AND RESCUE TASK FORCES.—

''(A) IN GENERAL.—There are authorized to be appropriated to carry out section 632—

''(i) $160,000,000 for fiscal year 2003; and

''(ii) $42,000,000 for each of fiscal years 2004 through 2006.

''(B) AVAILABILITY OF AMOUNTS.—Amounts made available under subparagraph (A) shall remain available until expended.''.

SA 4926. Mr. CORZINE (for himself and Mr. JEFFORDS) submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

Subtitle E—Chemical Security

SEC. 241. SHORT TITLE.

This subtitle may be cited as the ''Chemical Security Act of 2002''.

SEC. 242. FINDINGS.

Congress finds that—

(1) the chemical industry is a crucial part of the critical infrastructure of the United States—

(A) in its own right; and

(B) because that industry supplies resources essential to the functioning of other critical infrastructures;

(2) the possibility of terrorist and criminal attacks on chemical sources (such as industrial facilities) poses a serious threat to public health, safety, and welfare, critical infrastructure, national security, and the environment;

(3) the possibility of theft of dangerous chemicals from chemical sources for use in terrorist attacks poses a further threat to public health, safety, and welfare, critical infrastructure, national security, and the environment; and

(4) there are significant opportunities to prevent theft from, and criminal attack on, chemical sources and reduce the harm that such acts would produce by—

(A)(i) reducing usage and storage of chemicals by changing production methods and processes; and

(ii) employing inherently safer technologies in the manufacture, transport, and use of chemicals;

(B) enhancing secondary containment and other existing mitigation measures; and

(C) improving security.

SEC. 243. DEFINITIONS.

In this subtitle:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) CHEMICAL SOURCE.—The term ''chemical source'' means a stationary source (as defined in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2))) that contains a substance of concern.

(3) COVERED SUBSTANCE OF CONCERN.—The term ''covered substance of concern'' means a substance of concern that, in combination with a chemical source and other factors, is designated as a high priority category by the Administrator under section 244(a)(1).

(4) EMPLOYEE.—The term ''employee'' means—

(A) a duly recognized collective bargaining representative at a chemical source; or

(B) in the absence of such a representative, other appropriate personnel.

(5) SAFER DESIGN AND MAINTENANCE.—The term ''safer design and maintenance'' includes, with respect to a chemical source that is within a high priority category designated under section 244(a)(1), implementation, to the extent practicable, of the practices of—

(A) preventing or reducing the vulnerability of the chemical source to an unauthorized release of a covered substance of concern through use of inherently safer technology;

(B) reducing the vulnerability of the chemical source to an unauthorized release of a covered substance of concern through use of well-maintained secondary containment, control, or mitigation equipment;

(C) reducing the vulnerability of the chemical source to an unauthorized release of a covered substance of concern by implementing security measures; and

(D) reducing the potential consequences of any vulnerability of the chemical source to an unauthorized release of a covered substance of concern through the use of buffer zones between the chemical source and surrounding populations (including buffer zones between the chemical source and residences, schools, hospitals, senior centers, shopping centers and malls, sports and entertainment arenas, public roads and transportation routes, and other population centers).

(6) SECURITY MEASURE.—

(A) IN GENERAL.—The term ''security measure'' means an action carried out to increase the security of a chemical source.

(B) INCLUSIONS.—The term ''security measure'', with respect to a chemical source, includes—

(i) employee training and background checks;

(ii) the limitation and prevention of access to controls of the chemical source;

(iii) protection of the perimeter of the chemical source;

(iv) the installation and operation of an intrusion detection sensor; and

(v) a measure to increase computer or computer network security.

(7) SUBSTANCE OF CONCERN.—

(A) IN GENERAL.—The term ''substance of concern'' means—

(i) any regulated substance (as defined in section 112(r) of the Clean Air Act (42 U.S.C. 7412(r))); and

(ii) any substance designated by the Administrator under section 244(a).

(B) EXCLUSION.—The term ''substance of concern'' does not include liquefied petroleum gas that is used as fuel or held for sale as fuel at a retail facility as described in section 112(r)(4)(B) of the Clean Air Act (42 U.S.C. 7412(r)(4)(B)).

(8) UNAUTHORIZED RELEASE.—The term ''unauthorized release'' means—

(A) a release from a chemical source into the environment of a covered substance of concern that is caused, in whole or in part, by a criminal act;

(B) a release into the environment of a covered substance of concern that has been removed from a chemical source, in whole or in part, by a criminal act; and

(C) a release or removal from a chemical source of a covered substance of concern that is unauthorized by the owner or operator of the chemical source.

(9) USE OF INHERENTLY SAFER TECHNOLOGY.—

(A) IN GENERAL.—The term ''use of inherently safer technology'', with respect to a chemical source, means use of a technology, product, raw material, or practice that, as compared with the technologies, products, raw materials, or practices currently in use—

(i) reduces or eliminates the possibility of a release of a substance of concern from the chemical source prior to secondary containment, control, or mitigation; and

(ii) reduces or eliminates the threats to public health and the environment associated with a release or potential release of a substance of concern from the chemical source.

(B) INCLUSIONS.—The term ''use of inherently safer technology'' includes input substitution, catalyst or carrier substitution, process redesign (including reuse or recycling of a substance of concern), product reformulation, procedure simplification, and technology modification so as to—

(i) use less hazardous substances or benign substances;

(ii) use a smaller quantity of covered substances of concern;

(iii) reduce hazardous pressures or temperatures;

(iv) reduce the possibility and potential consequences of equipment failure and human error;

(v) improve inventory control and chemical use efficiency; and

(vi) reduce or eliminate storage, transportation, handling, disposal, and discharge of substances of concern.

SEC. 244. DESIGNATION OF AND REQUIREMENTS FOR HIGH PRIORITY CATEGORIES.

(a) DESIGNATION AND REGULATION OF HIGH PRIORITY CATEGORIES BY THE ADMINISTRATOR.—

(1) IN GENERAL.—Not later than December 31, 2002, the Administrator, in consultation with the Secretary and State and local agencies responsible for planning for and responding to unauthorized releases and providing emergency health care, shall promulgate regulations to designate certain combinations of chemical sources and substances of concern as high priority categories based on the severity of the threat posed by an unauthorized release from the chemical sources.

(2) FACTORS TO BE CONSIDERED.—In designating high priority categories under paragraph (1), the Administrator, in consultation with the Secretary, shall consider—

(A) the severity of the harm that could be caused by an unauthorized release;

(B) the proximity to population centers;

(C) the threats to national security;

(D) the threats to critical infrastructure;

(E) threshold quantities of substances of concern that pose a serious threat; and

(F) such other safety or security factors as the Administrator, in consultation with the Secretary, determines to be appropriate.

(3) REQUIREMENTS FOR HIGH PRIORITY CATEGORIES.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator, in consultation with the Secretary, the United States Chemical Safety and Hazard Investigation Board, and State and local agencies described in paragraph (1), shall promulgate regulations to require each owner and each operator of a chemical source that is within a high priority category designated under paragraph (1), in consultation with local law enforcement, first responders, and employees, to—

(i) conduct an assessment of the vulnerability of the chemical source to a terrorist attack or other unauthorized release;

(ii) using appropriate hazard assessment techniques, identify hazards that may result from an unauthorized release of a covered substance of concern; and

(iii) prepare a prevention, preparedness, and response plan that incorporates the results of those vulnerability and hazard assessments.

(B) ACTIONS AND PROCEDURES.—A prevention, preparedness, and response plan required under subparagraph (A)(iii) shall include actions and procedures, including safer design and maintenance of the chemical source, to eliminate or significantly lessen the potential consequences of an unauthorized release of a covered substance of concern.

(C) THREAT INFORMATION.—To the maximum extent permitted by applicable authorities and the interests of national security, the Secretary, in consultation with the Administrator, shall provide owners and operators of chemical sources with threat information relevant to the assessments and plans required under subsection (b).

(4) REVIEW AND REVISIONS.—Not later than 5 years after the date of promulgation of regulations under each of paragraphs (1) and (3), the Administrator, in consultation with the Secretary, shall review the regulations and make any necessary revisions.

(5) ADDITION OF SUBSTANCES OF CONCERN.—For the purpose of designating high priority categories under paragraph (1) or any subsequent revision of the regulations promulgated under paragraph (1), the Administrator, in consultation with the Secretary, may designate additional substances that pose a serious threat as substances of concern.

(b) CERTIFICATION.—

(1) VULNERABILITY AND HAZARD ASSESSMENTS.—Not later than 1 year after the date of promulgation of regulations under subsection (a)(3), each owner and each operator of a chemical source that is within a high priority category designated under subsection (a)(1) shall—

(A) certify to the Administrator that the chemical source has conducted assessments in accordance with the regulations; and

(B) submit to the Administrator written copies of the assessments.

(2) PREVENTION, PREPAREDNESS, AND RESPONSE PLANS.—Not later than 18 months after the date of promulgation of regulations under subsection (a)(3), the owner or operator shall—

(A) certify to the Administrator that the chemical source has completed a prevention, preparedness, and response plan that incorporates the results of the assessments and complies with the regulations; and

(B) submit to the Administrator a written copy of the plan.

(3) 5-YEAR REVIEW.—Not later than 5 years after each of the date of submission of a copy of an assessment under paragraph (1) and a plan under paragraph (2), and not less often than every 3 years thereafter, the owner or operator of the chemical source covered by the assessment or plan, in coordination with local law enforcement and first responders, shall—

(A) review the adequacy of the assessment or plan, as the case may be; and

(B)(i) certify to the Administrator that the chemical source has completed the review; and

(ii) as appropriate, submit to the Administrator any changes to the assessment or plan.

(4) PROTECTION OF INFORMATION.—

(A) DISCLOSURE EXEMPTION.—Except with respect to certifications specified in paragraphs (1) through (3) of this subsection and section 245(a), all information provided to the Administrator under this subsection, and all information derived from that information, shall be exempt from disclosure under section 552 of title 5, United States Code.

(B) DEVELOPMENT OF PROTOCOLS.—

(i) IN GENERAL.—The Administrator, in consultation with the Secretary, shall develop such protocols as are necessary to protect the copies of the assessments and plans required to be submitted under this subsection (including the information contained in those assessments and plans) from unauthorized disclosure.

(ii) REQUIREMENTS.—The protocols developed under clause (i) shall ensure that—

(I) each copy of an assessment or plan, and all information contained in or derived from the assessment or plan, is maintained in a secure location;

(II) except as provided in subparagraph (C), only individuals designated by the Administrator may have access to the copies of the assessments and plans; and

(III) no copy of an assessment or plan or any portion of an assessment or plan, and no information contained in or derived from an assessment or plan, shall be available to any person other than an individual designated by the Administrator.

(iii) DEADLINE.—As soon as practicable, but not later than 1 year after the date of enactment of this Act, the Administrator shall complete the development of protocols under clause (i).

(C) FEDERAL OFFICERS AND EMPLOYEES.—An individual referred to in subparagraph (B)(ii) who is an officer or employee of the United States may discuss with a State or local official the contents of an assessment or plan described in that subparagraph.

SEC. 245. ENFORCEMENT.

(a) REVIEW OF PLANS.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary, shall review each assessment and plan submitted under section 244(b) to determine the compliance of the chemical source covered by the assessment or plan with regulations promulgated under paragraphs (1) and (3) of section 244(a).

(2) CERTIFICATION OF COMPLIANCE.—

(A) IN GENERAL.—The Administrator shall certify in writing each determination of the Administrator under paragraph (1).

(B) INCLUSIONS.—A certification of the Administrator shall include a checklist indicating consideration by a chemical source of the use of 4 elements of safer design and maintenance described in subparagraphs (A) through (D) of section 243(6).

(C) EARLY COMPLIANCE.—

(i) IN GENERAL.—The Administrator, in consultation with the head of the Office, shall—

(I) before the date of publication of proposed regulations under section 244(a)(3), review each assessment or plan submitted to the Administrator under section 244(b); and

(II) before the date of promulgation of final regulations under section 244(a)(3), determine whether each such assessment or plan meets the consultation, planning, and assessment requirements applicable to high priority categories under section 244(a)(3).

(ii) AFFIRMATIVE DETERMINATION.—If the Administrator, in consultation with the head of the Office, makes an affirmative determination under clause (i)(II), the Administrator shall certify compliance of an assessment or plan described in that clause without requiring any revision of the assessment or plan.

(D) SCHEDULE FOR REVIEW AND CERTIFICATION.—

(i) IN GENERAL.—The Administrator, after taking into consideration the factors described in section 244(a)(2), shall establish a schedule for the review and certification of assessments and plans submitted under section 244(b).

(ii) DEADLINE FOR COMPLETION.—Not later than 3 years after the deadlines for the submission of assessments and plans under paragraph (1) or (2), respectively, of section 244(b), the Administrator shall complete the review and certification of all assessments and plans submitted under those sections.

(b) COMPLIANCE ASSISTANCE.—

(1) DEFINITION OF DETERMINATION.—In this subsection, the term ''determination'' means a determination by the Administrator that, with respect to an assessment or plan described in section 244(b)—

(A) the assessment or plan does not comply with regulations promulgated under paragraphs (1) and (3) of section 244(a); or

(B)(i) a threat exists beyond the scope of the submitted plan; or

(ii) current implementation of the plan is insufficient to address—

(I) the results of an assessment of a source; or

(II) a threat described in clause (i).

(2) DETERMINATION BY ADMINISTRATOR.—If the Administrator, after consultation with the Secretary, makes a determination, the Administrator shall—

(A) notify the chemical source of the determination; and

(B) provide such advice and technical assistance, in coordination with the Secretary and the United States Chemical Safety and Hazard Investigation Board, as is appropriate—

(i) to bring the assessment or plan of a chemical source described in section 244(b) into compliance; or

(ii) to address any threat described in clause (i) or (ii) of paragraph (1)(B).

(c) COMPLIANCE ORDERS.—

(1) IN GENERAL.—If, after the date that is 30 days after the later of the date on which the Administrator first provides assistance, or a chemical source receives notice, under subsection (b)(2)(B), a chemical source has not brought an assessment or plan for which the assistance is provided into compliance with regulations promulgated under paragraphs (1) and (3) of section 244(a), or the chemical source has not complied with an entry or information request under section 246, the Administrator may issue an order directing compliance by the chemical source.

(2) NOTICE AND OPPORTUNITY FOR HEARING.—An order under paragraph (1) may be issued only after notice and opportunity for a hearing.

(d) ABATEMENT ACTION.—

(1) IN GENERAL.—Notwithstanding a certification under section 245(a)(2), if the Secretary, in consultation with local law enforcement officials and first responders, determines that a threat of a terrorist attack exists that is beyond the scope of a submitted prevention, preparedness, and response plan of 1 or more chemical sources, or current implementation of the plan is insufficient to address the results of an assessment of a source or a threat described in subsection (b)(1)(B)(i), the Secretary shall notify each chemical source of the elevated threat.

(2) INSUFFICIENT RESPONSE.—If the Secretary determines that a chemical source has not taken appropriate action in response to a notification under paragraph (1), the Secretary shall notify the chemical source, the Administrator, and the Attorney General that actions taken by the chemical source in response to the notification are insufficient.

(3) RELIEF.—

(A) IN GENERAL.—On receipt of a notification under paragraph (2), the Administrator or the Attorney General may secure such relief as is necessary to abate a threat described in paragraph (1), including such orders as are necessary to protect public health or welfare.

(B) JURISDICTION.—The district court of the United States for the district in which a threat described in paragraph (1) occurs shall have jurisdiction to grant such relief as the Administrator or Attorney General requests under subparagraph (A).

SEC. 246. RECORDKEEPING AND ENTRY.

(a) RECORDS MAINTENANCE.—A chemical source that is required to certify to the Administrator assessments and plans under section 244 shall maintain on the premises of the chemical source a current copy of those assessments and plans.

(b) RIGHT OF ENTRY.—In carrying out this subtitle, the Administrator (or an authorized representative of the Administrator), on presentation of credentials—

(1) shall have a right of entry to, on, or through any premises of an owner or operator of a chemical source described in subsection (a) or any premises in which any records required to be maintained under subsection (a) are located; and

(2) may at reasonable times have access to, and may copy, any records, reports, or other information described in subsection (a).

(c) INFORMATION REQUESTS.—In carrying out this subtitle, the Administrator may require any chemical source to provide such information as is necessary to—

(1) enforce this subtitle; and

(2) promulgate or enforce regulations under this subtitle.

SEC. 247. PENALTIES.

(a) CIVIL PENALTIES.—Any owner or operator of a chemical source that violates, or fails to comply with, any order issued may, in an action brought in United States district court, be subject to a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) CRIMINAL PENALTIES.—Any owner or operator of a chemical source that knowingly violates, or fails to comply with, any order issued shall—

(1) in the case of a first violation or failure to comply, be fined not less than $2,500 nor more than $25,000 per day of violation, imprisoned not more than 1 year, or both; and

(2) in the case of a subsequent violation or failure to comply, be fined not more than $50,000 per day of violation, imprisoned not more than 2 years, or both.

(c) ADMINISTRATIVE PENALTIES.—

(1) PENALTY ORDERS.—If the amount of a civil penalty determined under subsection (a) does not exceed $125,000, the penalty may be assessed in an order issued by the Administrator.

(2) NOTICE AND HEARING.—Before issuing an order described in paragraph (1), the Administrator shall provide to the person against which the penalty is to be assessed—

(A) written notice of the proposed order; and

(B) the opportunity to request, not later than 30 days after the date on which the notice is received by the person, a hearing on the proposed order.

SEC. 248. NO EFFECT ON REQUIREMENTS UNDER OTHER LAW.

Nothing in this subtitle affects any duty or other requirement imposed under any other Federal or State law.

SEC. 249. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

SA 4927. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 86, strike lines 18 through 23, and insert the following:

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies;

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities; and

(D) to support the development of—

(i) methods to increase the ability of the Customs Service to inspect, or target for inspection, merchandise carried on any vessel that will arrive or has arrived at any port or place in the United States;

(ii) equipment to accurately detect explosives, or chemical and biological agents that could be used to commit terrorist acts against the United States;

(iii) equipment to accurately detect nuclear materials, including scintillation-based detection equipment capable of attachment to spreaders to signal the presence of nuclear materials during the unloading of containers;

(iv) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including ''smart sensors'' that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit such information to the appropriate authorities at a remote location;

(v) tools to mitigate the consequences of a terrorist act at a port of the United States, including a network of sensors to predict the dispersion of radiological, chemical, or biological agents that might be intentionally or accidentally released; and

(vi) applications to apply existing technologies from other industries to increase overall port security.

SA 4928. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 246, line 21, strike ''and'' and insert ''or''.

On page 246, line 24, strike ''and'' and insert ''or''.

SA 4929. Mr. REID submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 208, insert between lines 7 and 8 the following:

SEC. 510. JOINT SPONSORSHIP ARRANGEMENTS.

The Secretary may enter into joint sponsorship arrangements under section 309(b) for sites used for emergency preparedness and response training.

SA 4930. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 248, line 1, between ''59,'' and ''72,'' add ''71,''.

SA 4931. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In the amendment strike from page 248 through page 260 and insert the following:

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

''(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives;

''(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

''(iii) at the Secretary's option, or if requested by a majority of the employee representatives who have made recommendations, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

''(C) IMPLEMENTATION.—

''(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.

''(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary determines, in the Secretary's sole and unreviewable discretion, that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.

''(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

''(D) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly as internal rules of departmental procedure which shall not be subject to review. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection;

''(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employee representatives providing recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director may meet and confer; and

''(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) PROVISIONS RELATING TO LABOR-MANAGEMENT RELATIONS.—Nothing in this section shall be construed as conferring authority on the Secretary of Homeland Security to modify any of the provisions of section 842 of the Homeland Security Act of 2002.

''(h) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 1501 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

''97. Department of Homeland Security ..... 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer under this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SA 4932. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 268, strike line 19 and all that follows through page 280, line 5.

SA 4933. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 302, strike line 21 and all that follows through page 303, line 19.

SA 4934. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 60, line 8, strike all through ''(5 U.S.C. 2 App.))'' on line 9.

SA 4935. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 280, beginning on line 11, strike ''An advisory committee established under this section'' and all that follows through line 24.

SA 4936. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 244, strike line 19 and all that follows through page 260, line 23, and insert the following:

SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

''CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

''Sec.

''9701. Establishment of human resources management system by the Secretary.

''9702. Establishment of human resources management system by the President.

''§ 9701. Establishment of human resources management system by the Secretary

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part, as referred to

in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.— The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative at least 60 days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

''(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be fully consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 1501 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section and section 9702) shall cease to be available.

''§ 9702. Determination by the President

''The authority under section 9701 to establish or impose a human resources management system shall be exercised only when the President issues an order determining that—

''(1) the affected agency or subdivision has, as a primary function, intelligence, counterintelligence, investigative, or national security work;

''(2) the provisions of chapter 43, 51, 53, 71, 75, or 77 or of the imposed agreement cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations;

''(3) the mission and responsibilities of the affected agency or subdivision have materially changed; and

''(4) a majority of the employees within that agency or subdivision have, as their primary duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.''.

(3) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

''97. Department of Homeland Security ..... 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 842. LABOR-MANAGEMENT RELATIONS.

(a) EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the President may issue an order excluding any executive agency, or subdivision thereof, from coverage under chapter 71 of title 5, United States Code, if the President determines that—

(A) the agency or subdivision has, as a primary function, intelligence, counterintelligence, investigative, or national security work; and

(B) the provisions of such chapter 71 cannot be applied to that agency or subdivision in a matter consistent with national security requirements and considerations.

(2) ADDITIONAL DETERMINATION.—In addition to the requirements under paragraph (1), the President may issue an order excluding any executive agency, or subdivision thereof, transferred to the Department under this Act, from coverage under chapter 71 of title 5, United States Code, only if the President determines that—

(A) the mission and responsibilities of the agency or subdivision materially change; and

(B) a majority of the employees within such agency or subdivision have, as their primary duty, intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(3) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) or (2) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of title 5, United States Code; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—Each unit, which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department under this Act, continue to be so recognized for such purposes, unless—

(1) the mission and responsibilities of the personnel in such unit (or subdivision), or the threats of domestic terrorism being addressed by the personnel in such unit (or subdivision), materially change; and

(2) a substantial number of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(c) WAIVER.—If the President determines that the application of subsections (a) and (b), would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

SA 4937. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 451, strike line 17 and all that follows through page 452, line 12, and insert the following:

(d) EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS.—

(1) EFFECTIVE DATE.—Except as provided under paragraph (3), a reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (g)) with respect to such plan, only if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress.

(2) SESSION OF CONGRESS.—For the purpose of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(3) LATER EFFECTIVE DATE.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) PUBLICATION OF PLAN.—A reorganization plan which is effective shall be printed—

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(e) EFFECT ON OTHER LAWS; PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in the officer's official capacity or in relation to the discharge of the officer's official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(f) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (g) through (j) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(g) TERMS OF RESOLUTION.—For the purposes of subsections (f) through (j), ''resolution'' means only a joint resolution of Congress, the matter after the resolving clause of which is as follows: ''That Congress approves the reorganization plan transmitted to Congress by the President on _____, 20____.'', and includes such modifications and revisions as are submitted by the President under subsection (c). The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than 1 reorganization plan.

(h) INTRODUCTION AND REFERENCE OF RESOLUTION.—

(1) INTRODUCTION.—No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under subsection (a), a resolution, as defined in subsection (g), shall be—

(A) introduced (by request) in the House by the chairman of the Government Reform Committee of the House, or by a Member or Members of the House designated by such chairman; and

(B) introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(2) REFERRAL.—A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(i) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—If the committee to which is referred a resolution introduced pursuant to subsection (h)(1) has not reported such a resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(j) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (i)) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(5) PRIOR PASSAGE.—If, prior to the passage by 1 House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

SA 4938. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 222, strike line 18 and all that follows through page 225, line 12, and insert the following:

SEC. 811. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Officer for Civil Rights and Civil Liberties of any complaints of violations of civil rights or civil liberties, and consult with the Officer for Civil Rights and Civil Liberties regarding the investigation of such complaints, upon request or as appropriate;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General and the appropriate committees or subcommittees of Congress, or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or

grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SA 4939. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, strike lines 8 and 9, and insert the following: This Act shall not take effect until the Congress provides for an effective date for this Act in subsequent legislation.

SA 4940. Mr. DODD submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 208, between lines 7 and 8, insert the following:

SEC. 510. GRANTS FOR FIREFIGHTING PERSONNEL.

Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

(2) by inserting after subsection (b) the following:

''(c) PERSONNEL GRANTS.—

''(1) DURATION.—In awarding grants for hiring firefighting personnel in accordance with subsection (b)(3)(A), the Director shall award grants extending over a 3-year period.

''(2) MAXIMUM AMOUNT.—The total amount of grants awarded under this subsection shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

''(3) FEDERAL SHARE.—

''(A) IN GENERAL.—A grant under this subsection shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

''(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

''(4) APPLICATION.—An application for a grant under this subsection, shall—

''(A) meet the requirements under subsection (b)(5);

''(B) include an explanation for the applicant's need for Federal assistance; and

''(C) contain specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

''(5) MAINTENANCE OF EFFORT.—Grants awarded under this subsection shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.''; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

''(3) SUPPLEMENTAL APPROPRIATION.—In addition to the authorization provided in paragraph (1), there are authorized to be appropriated $1,000,000,000 for each of fiscal years 2003 and 2004 for the purpose of providing personnel grants described in subsection (c). Such sums may be provided solely for the purpose of hiring employees engaged in fire protection (as defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203)), and shall not be subject to the provisions of paragraphs (10) or (11) of subsection (b).''.

SA 4941. Mr. LIEBERMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 255 after line 17, insert the following:

''(f) NONAPPLICATION OF CERTAIN AUTHORITIES TO CHAPTER 71.—No authority under this chapter to waive, modify, or otherwise affect law shall apply to chapter 71.

SA 4942. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike Section 303(1)(D).

SA 4943. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike Section 308(c)(2) through 308(c)(4).

SA 4944. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike Section 309(a)(1)(B).

SA 4945. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike Section 309(c).

SA 4946. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKELY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike Section 309(f) and insert the following:

(f) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—Funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy.

SA 4947. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKELY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

In Section 303, paragraph 1, after the word ''thereto'', insert the following: ''That as directly related to homeland security''

SA 4948. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike title XI and insert the following:

TITLE XI—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

SEC. 1301. ESTABLISHMENT.

(a) IN GENERAL.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the ''Agency'').

(b) INDEPENDENT REGULATORY AGENCY.—The Agency shall be an independent regulatory agency with the Department of Justice.

(c) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

(d) STATUTORY CONSTRUCTION.—Nothing in title XI, or any amendment made by that title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by, the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or any officer, employee, or component thereof, immediately prior to the effective date of title XI.

SEC. 1302. DIRECTOR OF THE AGENCY.

(a) APPOINTMENT.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono

Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency; and

(2) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the ''Board'') shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Attorney General, in consultation with the Director and the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(d) CHAIR.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) DECISIONS OF THE BOARD.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

(h) REFERRAL OF CASE TO THE DIRECTOR OF THE AGENCY FOR IMMIGRATION HEARINGS AND APPEALS.—

(1) IN GENERAL.—The Board shall refer to the Director of the Agency for Immigration Hearings and Appeals for review of its decision all cases which—

(A) the Director, in consultation with the Attorney General, directs the Board to refer to him;

(B) the Chairman or a majority of the Board believes should be referred to the Director of the Agency for Immigration Hearings and Appeals for review; and

(C) the Under Secretary of Homeland Security for Immigration Affairs or the Attorney General requests be referred to the Director for review.

(2) DECISION OF THE DIRECTOR.—In any case in which the Director of the Agency for Immigration Hearings and Appeals reviews the decision of the Board, the decision of the Director of the Agency for Immigration Hearings and Appeals shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided by regulations.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by the Attorney General, in consultation with the Director and the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) ESTABLISHMENT OF POSITION.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1306. REMOVAL OF JUDGES.

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

Subtitle B—Transfer of Functions and Savings Provisions

SEC. 1311. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions under the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by section 1101(a)(2) of this Act) vested by statute in, or exercised by, the Executive Office of Immigration Review of the Department of Justice (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Agency.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Agency. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Attorney General or the Executive Office of Immigration Review of the Department of Justice, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Agency, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Executive Office of Immigration Review, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle C—Effective Date

SEC. 1321. EFFECTIVE DATE.

This title shall take effect one year after the effective date of division A of this Act.

SA 4949. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike Title IV, subtitles D, E, and F and insert the following:

—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

SEC. 1001. SHORT TITLE.

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

SEC. 1002. DEFINITIONS.

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary of Homeland Security for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary of Homeland Security for Immigration Services appointed under section 113.

''(3) The Assistant Secretary of Homeland Security for Enforcement and Border Affairs appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' means the following:

''(1) This Act.

''(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following new paragraphs:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

''SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 1111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

''(C) INSPECTIONS.—The Under Secretary shall be directly responsible for the administration and enforcement of the functions of the Directorate under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Under Secretary shall coordinate, with the Civil Rights Officer of the Department of Homeland Security or other officials, as appropriate, the resolution of immigration issues that involve civil rights violations.

''(D) RISK ANALYSIS AND RISK MANAGEMENT.—Assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities consistent with the mission and functions of the Directorate.

''(3) DEFINITION.—In this chapter, the term ''immigration policy, administration, and inspection functions'' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF POLICY.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Policy. Under the authority of the Under Secretary, the Chief of Policy shall be responsible for—

''(A) establishing national immigration policy and priorities;

''(B) performing policy research and analysis on issues arising under the immigration laws of the United States; and

''(C) coordinating immigration policy between the Directorate, the Service Bureau, and the Enforcement Bureau.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

''(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF THE UNDER SECRETARY.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary of Immigration Affairs, Department of Justice.''.

(c) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(d) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary of Homeland Security for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''Under Secretary of Homeland Security for Immigration Affairs'' and ''Under Secretary'', respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in the section heading, by striking ''COMMISSIONER'' and inserting ''UNDER SECRETARY'';

(C) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(D) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary of Homeland Security for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretary of Homeland Security for Immigration Services, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

''SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement and Border Affairs (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary of Homeland Security for Enforcement and Border Affairs (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The border patrol function.

''(B) The detention function, except as specified in section 113(b)(2)(F).

''(C) The removal function.

''(D) The intelligence function.

''(E) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate record-keeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) COMPENSATION OF ASSISTANT SECRETARY OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Security of Homeland Security for Enforcement and Border Affairs, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

''SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

''SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review (or its successor entity).

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity).

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review (or its successor entity) shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review (or its successor entity), respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity) to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review (or its successor entity), on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement and Border Affairs.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

Under the direction of the Secretary, the Under Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy, administration, and inspection functions;

(B) immigration service functions; and

(C) immigration enforcement functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Under the direction of the Secretary, and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), the Under Secretary shall delegate—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement.

(2) RESERVATION OF FUNCTIONS.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103), immigration policy, administration, and inspection functions shall be reserved for exercise by the Under Secretary.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be on a nonexclusive basis as the Under Secretary may determine may be necessary to ensure the faithful execution of the Under Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Under Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Under Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or any officer, employee, or component thereof immediately prior to the effective date of this title.

SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1120. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants'' and inserting ''services''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1201. SHORT TITLE.

This title may be cited as the ''Unaccompanied Alien Child Protection Act of 2002''.

SEC. 1202. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term ''Service'' means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

''(53) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(54) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

Subtitle A—Structural Changes

SEC. 1211. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.—

(1) RESPONSIBILITIES OF THE OFFICE.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) DUTIES OF THE DIRECTOR WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions relating to the care and placement of an unaccompanied alien child;

(B) making placement, release, and detention determinations for all unaccompanied alien children in the custody of the Office;

(C) implementing the placement, release, and detention determinations made by the Office;

(D) convening, in the absence of the Assistant Secretary, Administration for Children and Families of the Department of Health and Human Services, the Interagency Task Force on Unaccompanied Alien Children established in section 1212;

(E) identifying a sufficient number of qualified persons, entities, and facilities to house unaccompanied alien children in accordance with sections 1222 and 1223;

(F) overseeing the persons, entities, and facilities described in sections 1222 and 1223 to ensure their compliance with such provisions;

(G) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities qualified to contract with the Office to provide the services described in sections 1231 and 1232;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office's custody and care, which shall include—

(i) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;

(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established under section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1222, 1223, 1231, and 1232; and

(B) compel compliance with the terms and conditions set forth in section 1223, including the power to terminate the contracts of providers that are not in compliance with such conditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(b) NO EFFECT ON SERVICE, EOIR, AND DEPARTMENT OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1212. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) ESTABLISHMENT.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) COMPOSITION.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Under Secretary of Homeland Security for Immigration Affairs.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.

(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1213. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this subtitle before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this subtitle, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the

record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

SEC. 1214. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle B—Custody, Release, Family Reunification, and Detention

SEC. 1221. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

(i) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(ii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

(iii) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subsection (a) and subparagraphs (B) and (C), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary of Homeland Security has substantial evidence that such child endangers the national security of the United States.

(2) NOTIFICATION.—Upon apprehension of an unaccompanied alien child, the Secretary shall promptly notify the Office.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) TRANSFER TO THE SERVICE.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements to transfer the care and custody of such child to the Service.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about such alien's age would affect the alien's eligibility for treatment under the provisions of this title, a determination of whether such alien meets the age requirements of this title shall be made in accordance with the provisions of section 1225.

SEC. 1222. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the Director's discretion under paragraph (4) and section 1223(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with one of the following individuals in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child's well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—The Director shall take affirmative steps to ensure that unaccompanied alien children are protected from smugglers, traffickers, or others seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity. Attorneys involved in such activities should be reported to their State bar associations for disciplinary action.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director is authorized to make grants to, and enter into contracts with, voluntary agencies to carry out the provisions of this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director is authorized to reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to this title.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person listed in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

SEC. 1223. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 1222(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential

needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary of Homeland Security shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1224. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child's well being.

(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child's repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director's efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.

(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1225. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child's age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1226. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1231. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) GUARDIAN AD LITEM.—

(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and

(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1232. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1221(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) GOVERNMENT FUNDED REPRESENTATION.—

(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with such agencies, the Director shall ensure that no such agency is—

(i) a grantee or contractee for services provided under section 1222 or 1231; and

(ii) simultaneously a grantee or contractee for services provided under subparagraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—The Director shall ensure that all unaccompanied alien children have legal representation within 7 days of the child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompanied alien child all proceedings and actions relating to the child's immigration status or other actions involving the

Service and appear in person for all individual merits hearings before the Executive Office for Immigration Review (or its successor entity) and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) TERMINATION OF APPOINTMENT.—Counsel shall carry out the duties described in subsection (c) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.

(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1233. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect one year after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this subtitle.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1241. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 18 on the date of application who is present in the United States—

''(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,'';

(2) in subparagraph (B), by striking the period and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(C) the Secretary of Homeland Security may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

SEC. 1242. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1221(a)(2).

SEC. 1243. EFFECTIVE DATE.

The amendment made by section 1241 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1251. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary of Homeland Security shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1252. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

Subtitle F—Authorization of Appropriations

SEC. 1261. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE XIII—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

SEC. 1301. ESTABLISHMENT.

(a) IN GENERAL.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the ''Agency'').

(b) ABOLITION OF EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

SEC. 1302. DIRECTOR OF THE AGENCY.

(a) APPOINTMENT.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono

Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency;

(2) appoint each Member of the Board of Immigration Appeals, including a Chair;

(3) appoint the Chief Immigration Judge; and

(4) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the ''Board'') shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Director, in consultation with the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(d) CHAIR.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) DECISIONS OF THE BOARD.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by the Director, in consultation with the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of professional legal expertise in immigration and nationality law.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) ESTABLISHMENT OF POSITION.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1306. REMOVAL OF JUDGES.

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

Subtitle B—Transfer of Functions and Savings Provisions

SEC. 1311. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions under the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by section 1101(a)(2) of this Act) vested by statute in, or exercised by, the Executive Office of Immigration Review of the Department of Justice (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Agency.

(b) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Agency. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Attorney General or the Executive Office of Immigration Review of the Department of Justice, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this section; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Agency, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under subsection (a) shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this section, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(e) SUITS.—This section shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Executive Office of Immigration Review, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred under this section, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle C—Effective Date

SEC. 1321. EFFECTIVE DATE.

This title shall take effect one year after the effective date of division A of this Act.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 2102. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

''§ 1401. Establishment of agency Chief Human Capital Officers

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of

title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

''§ 1402. Authority and functions of agency Chief Human Capital Officers

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies; and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''14. Chief Human Capital Officers ..... 1401''.

SEC. 2103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 2104. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

SEC. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 2201. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAM PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operational processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

SEC. 2202. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(3) authority for agencies to appoint, without regard to the provisions of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

''§ 3319. Alternative ranking and selection procedures

''(a)(1) the Office, in exercising its authority under section 3304; or

''(2) an agency to which the Office has delegated examining authority under section 1104(a)(2);

may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islander; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

SEC. 2203. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''§ 3521. Definitions

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall not include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

''§ 3522. Agency plans; approval

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Director of the Office of Personnel Management.

''§ 3523. Authority to provide voluntary separation incentive payments

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on any other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

''§ 3524. Effect of subsequent employment with the Government

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in the case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''§ 3525. Regulations

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT''; and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.
''3522. Agency plans; approval.
''3523. Authority to provide voluntary separation incentive payments.
''3524. Effect of subsequent employment with the Government.
''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is

undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separated from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors;''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 Stat. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENT.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 2204. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

SEC. 2301. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a,'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

''§ 4107. Academic degree training

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the Senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policymaking, or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

SEC. 2402. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.— Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be established in accordance with clause (i); and''.

SEC. 2403. COMPENSATORY TIME OFF FOR TRAVEL.

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

SA 4950. Mr. INOUYE submitted an amendment intended to be proposed to amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 5, in the item relating to section 801, insert '', Tribal,'' after ''State''.

On page 9, line 21, insert ''tribal,'' after ''State,''.

On page 10, between lines 9 and 10, insert the following:

(9) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

On page 10, line 10, strike ''(9)'' and insert ''(10)''.

On page 10, strike lines 22 through 24 and insert the following:

(B) an Alaska Native village or organization; and

On page 11, line 3, strike ''(11)'' and insert ''(12)''.

On page 11, line 7, strike ''(12)'' and insert ''(13)''.

On page 11, line 9, strike ''(13)'' and insert ''(14)''.

On page 11, line 11, strike ''(14)'' and insert ''(15)''.

On page 11, line 17, strike ''(15)'' and insert ''(16)''.

On page 12, strike line 9 and insert the following:

(17) TRIBAL COLLEGE OR UNIVERSITY.—The term ''tribal college or university'' has the meaning given the term ''tribally controlled college or university'' in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

(18) TRIBAL GOVERNMENT.—The term ''tribal government'' means the governing body of an Indian tribe that is recognized by the Secretary of the Interior.

(19)(A) UNITED STATES.—The term ''United States, when used

On page 15, line 3, insert ''tribal,'' after ''States,''.

On page 16, line 9, insert '', Tribal,'' after ''State''.

On page 16, line 11, insert '', tribal,'' after ''State''.

On page 17, line 14, insert '', tribal,'' after ''State''.

On page 17, line 21, insert '', tribal,'' after ''State''.

On page 17, line 1, insert '', tribal,'' after ''State''.

On page 23, line 10, insert '', tribal,'' after ''State''.

On page 24, line 11, insert '', tribal,'' after ''State''.

On page 25, line 9, insert '', tribal,'' after ''State''.

On page 25, line 20, insert '', tribal,'' after ''State''.

On page 26, line 4, insert '', tribal,'' after ''State''.

On page 26, line 10, insert '', tribal,'' after ''State''.

On page 27, line 1, insert '', tribal,'' after ''State''.

On page 27, line 21, insert ''tribal,'' after ''State,''.

On page 28, line 24, insert '', tribal,'' after ''State''.

On page 29, line 7, insert ''tribal,'' after ''State,''.

On page 36, line 3, insert '', tribal,'' after ''State''.

On page 37, line 5, insert ''tribal,'' after ''State,''.

On page 38, line 22, insert ''tribal,'' after ''State,''.

On page 42, line 9, insert ''tribal,'' after ''State,''.

On page 42, line 11, strike ''or State'' and insert '', State, or tribal''.

On page 43, line 9, insert '', tribal,'' after ''State''.

On page 43, line 12, insert '', tribal,'' after ''State''.

On page 43, line 15, insert '', tribal,'' after ''State''.

On page 45, line 1, insert ''tribal,'' after ''State,''.

On page 46, line 17, insert '', tribal,'' after ''State''.

On page 50, line 13, insert '', tribal,'' after ''State''.

On page 54, line 22, insert ''tribal,'' after ''State,''.

On page 60, line 1, insert ''tribal,'' after ''State,''.

On page 60, line 11, insert ''tribal,'' after ''State,''.

On page 60, line 17, insert ''tribal,'' after ''State,''.

On page 61, line 12, insert ''tribal,'' after ''State,''.

On page 62, line 7, insert '', tribal,'' after ''State''.

On page 62, line 19, insert '', tribal,'' after ''State''.

On page 63, line 6, insert '', tribal,'' after ''State''.

On page 63, line 12, insert '', tribal,'' after ''State''.

On page 65, line 2, insert ''tribal,'' after ''State,''.

On page 71, line 10, strike ''state,'' and insert ''State, tribal,''.

On page 97, line 3, insert '', tribal,'' after ''State''.

On page 105, line 11, insert ''tribal colleges and universities,'' after ''education,''.

On page 106, line 16, insert ''tribal,'' after ''State,''.

On page 107, line 3, insert ''tribal,'' after ''State,''.

On page 107, line 17, insert '', tribal,'' after ''State''.

On page 147, line 1, insert '', tribal,'' after ''State''.

On page 154, line 7, insert '', tribal,'' after ''State''.

On page 201, line 22, insert ''tribal,'' after ''State,''.

On page 204, line 8, insert ''tribal,'' after ''State,''.

On page 214, line 7, insert ''tribal,'' after ''State,''.

On page 221, line 21, insert '', TRIBAL,'' after ''STATE''.

On page 221, line 24, insert '', Tribal,'' after ''State''.

On page 222, line 1, insert '', tribal,'' after ''State''.

On page 222, line 6, insert '', tribal,'' after ''State''.

On page 222, line 8, insert '', tribal,'' after ''State''.

On page 222, line 10, insert '', tribal,'' after ''State''.

On page 222, line 14, insert '', tribal,'' after ''State''.

On page 280, line 4, insert '', tribal,'' after ''State''.

On page 285, line 9, insert '', TRIBAL,'' after ''STATE''.

On page 285, line 11, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 285, line 12, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 289, line 10, insert ‘‘, Tribal,’’ after ‘‘State’’.
On page 289, line 13, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 289, line 16, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 289, line 19, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 289, line 22, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 290, line 6, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 290, line 13, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 291, line 6, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 301, line 21, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 4, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 12, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 14, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 21, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 304, line 23, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 305, line 3, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 305, line 5, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 305, line 9, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 305, line 12, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 305, line 23, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 306, line 5, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 306, line 19, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 307, line 19, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 308, line 15, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 309, line 23, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 310, line 20, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 2, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 6, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 9, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 21, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 311, line 23, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 312, line 4, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 312, line 3, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 312, line 17, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 312, line 20, insert ‘‘tribally or’’ after ‘‘other’’.
On page 312, line 22, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 313, line 1, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 313, line 18, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 316, line 15, strike ‘‘federal, state,’’ and insert ‘‘Federal, State, tribal,’’.
On page 316, line 24, strike ‘‘state,’’ and insert ‘‘State, tribal,’’.
On page 318, line 4, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 318, line 18, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 319, line 17, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 319, line 23, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 320, line 19, insert ‘‘or Indian tribe’’ after ‘‘subdivision)’’.
On page 321, line 4, insert ‘‘or Indian tribe’’ after ‘‘subdivision)’’.
On page 376, line 22, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 476, line 2, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 476, line 8, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 476, line 10, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 476, line 12, insert ‘‘, tribal,’’ after ‘‘State’’.

SA 4951. Mr. DODD proposed an amendment to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN OF NEBRASKA) TO THE AMENDMENT SA 4901 PROPOSED BY MR. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

At the end insert the following:

SEC. 510. GRANTS FOR FIREFIGHTING PERSONNEL.

Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

(2) by inserting after subsection (b) the following:

‘‘(c) PERSONNEL GRANTS.—

‘‘(1) DURATION.—In awarding grants for hiring firefighting personnel in accordance with subsection (b)(3)(A), the Director shall award grants extending over a 3-year period.

‘‘(2) MAXIMUM AMOUNT.—The total amount of grants awarded under this subsection shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

‘‘(3) FEDERAL SHARE.—

‘‘(A) IN GENERAL.—A grant under this subsection shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

‘‘(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

‘‘(4) APPLICATION.—An application for a grant under this subsection, shall—

‘‘(A) meet the requirements under subsection (b)(5);

‘‘(B) include an explanation for the applicant’s need for Federal assistance; and

‘‘(C) contain specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

‘‘(5) MAINTENANCE OF EFFORT.—Grants awarded under this subsection shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.’’; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

‘‘(3) SUPPLEMENTAL APPROPRIATION.—In addition to the authorization provided in paragraph (1), there are authorized to be appropriated $1,000,000,000 for each of fiscal years 2003 and 2004 for the purpose of providing personnel grants described in subsection (c). Such sums may be provided solely for the purpose of hiring employees engaged in fire protection (as defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203)), and shall not be subject to the provisions of paragraphs (10) or (11) of subsection (b).’’.

SA 4952. Mr. INOUYE submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 5, in the item relating to section 801, insert ‘‘, Tribal,’’ after ‘‘State’’.
On page 9, line 21, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 10, between lines 9 and 10, insert the following:

(9) INDIAN TRIBE.—The term ‘‘Indian tribe’’ means any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

On page 10, line 10, strike ‘‘(9)’’ and insert ‘‘(10)’’.
On page 10, strike lines 22 through 24 and insert the following:

(B) an Alaska Native village or organization; and

On page 11, line 3, strike ‘‘(11)’’ and insert ‘‘(12)’’.
On page 11, line 7, strike ‘‘(12)’’ and insert ‘‘(13)’’.
On page 11, line 9, strike ‘‘(13)’’ and insert ‘‘(14)’’.
On page 11, line 11, strike ‘‘(14)’’ and insert ‘‘(15)’’.
On page 11, line 17, strike ‘‘(15)’’ and insert ‘‘(16)’’.
On page 12, strike line 9 and insert the following:

(17) TRIBAL COLLEGE OR UNIVERSITY.—The term ‘‘tribal college or university’’ has the meaning given the term ‘‘tribally controlled college or university’’ in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

(18) TRIBAL GOVERNMENT.—The term ‘‘tribal government’’ means the governing body of an Indian tribe that is recognized by the Secretary of the Interior.

(19)(A) UNITED STATES.—The term ‘‘United States, when used
On page 15, line 3, insert ‘‘tribal,’’ after ‘‘States,’’.
On page 16, line 9, insert ‘‘, Tribal,’’ after ‘‘State’’.
On page 16, line 11, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 16, line 14, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 16, line 21, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 17, line 1, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 23, line 10, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 24, line 11, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 25, line 9, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 25, line 20, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 26, line 4, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 26, line 10, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 27, line 1, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 27, line 21, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 28, line 24, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 29, line 7, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 36, line 3, insert ‘‘, tribal,’’ after ‘‘State’’.
On page 37, line 5, insert ‘‘tribal,’’ after ‘‘State,’’.
On page 38, line 22, insert ‘‘tribal,’’ after ‘‘State,’’.

On page 42, line 9, insert ''tribal,'' after ''State,''.
On page 42, line 11, strike ''or State'' and insert '', State, or tribal''.
On page 43, line 9, insert '', tribal,'' after ''State''.
On page 43, line 12, insert '', tribal,'' after ''State''.
On page 43, line 15, insert '', tribal,'' after ''State''.
On page 45, line 1, insert ''tribal,'' after ''State,''.
On page 46, line 17, insert '', tribal,'' after ''State''.
On page 50, line 13, insert '', tribal,'' after ''State''.
On page 54, line 22, insert ''tribal,'' after ''State,''.
On page 60, line 1, insert ''tribal,'' after ''State,''.
On page 60, line 11, insert ''tribal,'' after ''State,''.
On page 60, line 17, insert ''tribal,'' after ''State,''.
On page 61, line 12, insert ''tribal,'' after ''State,''.
On page 62, line 7, insert '', tribal,'' after ''State''.
On page 62, line 19, insert '', tribal,'' after ''State''.
On page 63, line 6, insert '', tribal,'' after ''State''.
On page 63, line 12, insert '', tribal,'' after ''State''.
On page 65, line 2, insert ''tribal,'' after ''State,''.
On page 71, line 10, strike ''state,'' and insert ''State, tribal,''.
On page 97, line 3, insert '', tribal,'' after ''State''.
On page 105, line 11, insert ''tribal colleges and universities,'' after ''education,''.
On page 106, line 16, insert ''tribal,'' after ''State,''.
On page 107, line 3, insert ''tribal,'' after ''State,''.
On page 107, line 17, insert '', tribal,'' after ''State''.
On page 147, line 1, insert '', tribal,'' after ''State''.
On page 154, line 7, insert '', tribal,'' after ''State''.
On page 201, line 22, insert ''tribal,'' after ''State,''.
On page 204, line 8, insert ''tribal,'' after ''State,''.
On page 204, line 12, insert ''and Indian Health Service'' after ''Health Service''.
On page 214, line 7, insert ''tribal,'' after ''State,''.
On page 221, line 21, insert '', **tribal,**'' after ''**state**''.
On page 221, line 24, insert '', Tribal,'' after ''State''.
On page 222, line 1, insert '', tribal,'' after ''State''.
On page 222, line 6, insert '', tribal,'' after ''State''.
On page 222, line 8, insert '', tribal,'' after ''State''.
On page 222, line 10, insert '', tribal,'' after ''State''.
On page 222, line 14, insert '', tribal,'' after ''State''.
On page 280, line 4, insert '', tribal,'' after ''State''.
On page 285, line 9, insert '', TRIBAL,'' after ''STATE''.
On page 285, line 11, insert '', tribal,'' after ''State''.
On page 285, line 12, insert '', tribal,'' after ''State''.
On page 289, line 10, insert '', Tribal,'' after ''State''.
On page 289, line 13, insert ''tribal,'' after ''State,''.
On page 289, line 16, insert ''tribal,'' after ''State,''.
On page 289, line 19, insert ''tribal,'' after ''State,''.
On page 289, line 22, insert ''tribal,'' after ''State,''.
On page 290, line 6, insert ''tribal,'' after ''State,''.
On page 290, line 13, insert ''tribal,'' after ''State,''.
On page 291, line 6, insert '', tribal,'' after ''State''.
On page 301, line 21, insert '', tribal,'' after ''State''.
On page 304, line 4, insert '', tribal,'' after ''State''.
On page 304, line 12, insert '', tribal,'' after ''State''.
On page 304, line 14, insert '', tribal,'' after ''State''.
On page 304, line 21, insert '', tribal,'' after ''State''.
On page 304, line 23, insert ''tribal,'' after ''State,''.
On page 305, line 3, insert '', tribal,'' after ''State''.
On page 305, line 5, insert '', tribal,'' after ''State''.
On page 305, line 9, insert '', tribal,'' after ''State''.
On page 305, line 12, insert ''tribal,'' after ''State,''.
On page 305, line 23, insert ''tribal,'' after ''State,''.
On page 306, line 5, insert ''tribal,'' after ''State,''.
On page 306, line 19, insert '', tribal,'' after ''State''.
On page 307, line 19, insert '', tribal,'' after ''State''.
On page 308, line 15, insert '', tribal,'' after ''State''.
On page 309, line 23, insert '', tribal,'' after ''State''.
On page 310, line 20, insert '', tribal,'' after ''State''.
On page 311, line 2, insert '', tribal,'' after ''State''.
On page 311, line 6, insert '', tribal,'' after ''State''.
On page 311, line 9, insert '', tribal,'' after ''State''.
On page 311, line 21, insert '', tribal,'' after ''State''.
On page 311, line 23, insert '', tribal,'' after ''State''.
On page 312, line 4, insert ''tribal,'' after ''State,''.
On page 312, line 17, insert '', tribal,'' after ''State''.
On page 312, line 20, insert ''tribally or'' after ''other''.
On page 312, line 22, insert '', tribal,'' after ''State''.
On page 313, line 1, insert ''tribal,'' after ''State,''.
On page 313, line 18, insert '', tribal,'' after ''State''.
On page 316, line 15, strike ''federal, state,'' and insert ''Federal, State, tribal,''.
On page 316, line 24, strike ''state,'' and insert ''State, tribal,''.
On page 318, line 4, insert ''tribal,'' after ''State,''.
On page 318, line 18, insert ''tribal,'' after ''State,''.
On page 319, line 17, insert ''tribal,'' after ''State,''.
On page 319, line 23, insert ''tribal,'' after ''State,''.
On page 320, line 19, insert ''or Indian tribe'' after ''subdivision)''.
On page 321, line 4, insert ''or Indian tribe'' after ''subdivision)''.
On page 376, line 22, insert ''tribal,'' after ''State,''.
On page 476, line 2, insert ''tribal,'' after ''State,''.
On page 476, line 8, insert '', tribal,'' after ''State''.
On page 476, line 10, insert '', tribal,'' after ''State''.
On page 476, line 12, insert '', tribal,'' after ''State''.

SA 4953. Mr. LIBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

TITLE XVIII—NONEFFECTIVE PROVISIONS

SEC. 1801. NONEFFECTIVE PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (i) through (xiv).
(2) Section 311(i).
(3) Subtitle G of title VIII.
(4) Section 871.
(5) Section 890.
(6) Section 1707.
(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

(d) The amendment made by subsection (a)(1) of this section shall be effective one day after enactment.

SA 4954. Mr. REID (for Ms. CANTWELL (for herself, Mr. GRASSLEY, Mr. ENZI, and Mr. KOHL)) proposed an amendment to the bill S. 1742, to prevent the crime of identity theft, mitigate the harm to individuals victimized by identity theft, and for other purposes; as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Identity Theft Victims Assistance Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the crime of identity theft is the fastest growing crime in the United States;

(2) victims of identity theft often have extraordinary difficulty restoring their credit and regaining control of their identity because of the viral nature of identity theft;

(3) identity theft may be ruinous to the good name and credit of consumers whose identities are misappropriated, and victims of identity theft may be denied otherwise well-deserved credit, may have to spend enormous time, effort, and sums of money to remedy their circumstances, and may suffer extreme emotional distress including deep depression founded in profound frustration as they address the array of problems that may arise as a result of identity theft;

(4) victims are often required to contact numerous Federal, State, and local law enforcement agencies, consumer credit reporting agencies, and creditors over many years, as each event of fraud arises;

(5) the Government, business entities, and credit reporting agencies have a shared responsibility to assist identity theft victims, to mitigate the harm that results from fraud perpetrated in the victim's name;

(6) victims of identity theft need a nationally standardized means of—

(A) reporting identity theft to consumer credit reporting agencies and business entities; and

(B) evidencing their true identity and claim of identity theft to consumer credit reporting agencies and business entities;

(7) one of the greatest law enforcement challenges posed by identity theft is that stolen identities are often used to perpetrate crimes in many different localities in different States, and although identity theft is a Federal crime, most often, State and local law enforcement agencies are responsible for investigating and prosecuting the crimes; and

(8) the Federal Government should assist State and local law enforcement agencies to effectively combat identity theft and the associated fraud.

SEC. 3. TREATMENT OF IDENTITY THEFT MITIGATION.

(a) IN GENERAL.—Chapter 47 title 18, United States Code, is amended by adding after section 1028 the following:

"§ 1028A. Treatment of identity theft mitigation

''(a) DEFINITIONS.—As used in this section—

''(1) the term 'business entity' means any corporation, trust, partnership, sole proprietorship, or unincorporated association, including any financial service provider, financial information repository, creditor (as that term is defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), telecommunications, utilities, or other service provider;

''(2) the term 'consumer' means an individual;

''(3) the term 'financial information' means information identifiable as relating to an individual consumer that concerns the amount and conditions of the assets, liabilities, or credit of the consumer, including—

''(A) account numbers and balances;

''(B) nonpublic personal information, as that term is defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809); and

''(C) codes, passwords, social security numbers, tax identification numbers, State identifier numbers issued by a State department of licensing, and other information used for the purpose of account access or transaction initiation;

''(4) the term 'financial information repository' means a person engaged in the business of providing services to consumers who have a credit, deposit, trust, stock, or other financial services account or relationship with that person;

''(5) the term 'identity theft' means an actual or potential violation of section 1028 or any other similar provision of Federal or State law;

''(6) the term 'means of identification' has the same meaning given the term in section 1028; and

''(7) the term 'victim' means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer with the intent to commit, or to aid or abet, identity theft or any other violation of law.

''(b) INFORMATION AVAILABLE TO VICTIMS.—

''(1) IN GENERAL.—A business entity that possesses information relating to an alleged identity theft, or that has entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person that has made unauthorized use of the means of identification of the victim, shall, not later than 20 days after the receipt of a written request by the victim, meeting the requirements of subsection (c), provide, without charge, a copy of all application and transaction information related to the transaction being alleged as an identity theft to—

''(A) the victim;

''(B) any Federal, State, or local governing law enforcement agency or officer specified by the victim; or

''(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this section.

''(2) RULE OF CONSTRUCTION.—

''(A) IN GENERAL.—No provision of Federal or State law prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this section.

''(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this section requires a business entity to disclose information that the business entity is otherwise prohibited from disclosing under any other provision of Federal or State law.

''(c) VERIFICATION OF IDENTITY AND CLAIM.—Unless a business entity, at its discretion, is otherwise able to verify the identity of a victim making a request under subsection (b)(1), the victim shall provide to the business entity—

''(1) as proof of positive identification—

''(A) the presentation of a government-issued identification card;

''(B) if providing proof by mail, a copy of a government-issued identification card; or

''(C) upon the request of the person seeking business records, the business entity may inform the requesting person of the categories of identifying information that the unauthorized person provided the business entity as personally identifying information, and may require the requesting person to provide identifying information in those categories; and

''(2) as proof of a claim of identity theft, at the election of the business entity—

''(A) a copy of a police report evidencing the claim of the victim of identity theft;

''(B) a copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

''(C) any affidavit of fact that is acceptable to the business entity for that purpose.

''(d) LIMITATION ON LIABILITY.—No business entity may be held liable for a disclosure, made in good faith and reasonable judgment, to provide information under this section with respect to an individual in connection with an identity theft to other business entities, law enforcement authorities, victims, or any person alleging to be a victim, if—

''(1) the business entity complies with subsection (c); and

''(2) such disclosure was made—

''(A) for the purpose of detection, investigation, or prosecution of identity theft; or

''(B) to assist a victim in recovery of fines, restitution, rehabilitation of the credit of the victim, or such other relief as may be appropriate.

''(e) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under subsection (b) if, in the exercise of good faith and reasonable judgment, the business entity believes that—

''(1) this section does not require disclosure of the information; or

''(2) the request for the information is based on a misrepresentation of fact by the victim relevant to the request for information.

''(f) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this section creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

''(g) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this section, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

''(1) the business entity has made a reasonably diligent search of its available business records; and

''(2) the records requested under this section do not exist or are not available.

''(h) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to provide a private right of action or claim for relief.

''(i) ENFORCEMENT.—

''(1) CIVIL ACTIONS.—

''(A) IN GENERAL.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been, or is threatened to be, adversely affected by a violation of this section by any business entity, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

''(i) enjoin that practice;

''(ii) enforce compliance of this section;

''(iii) obtain damages—

''(I) in the sum of actual damages, restitution, and other compensation on behalf of the residents of the State; and

''(II) punitive damages, if the violation is willful or intentional; and

''(iv) obtain such other equitable relief as the court may consider to be appropriate.

''(B) NOTICE.—Before bringing an action under subparagraph (A), the attorney general of the State involved shall provide to the Attorney General of the United States—

''(i) written notice of the action; and

''(ii) a copy of the complaint for the action.

''(2) INTERVENTION.—

''(A) IN GENERAL.—On receiving notice of an action under paragraph (1)(B), the Attorney General of the United States shall have the right to intervene in that action.

''(B) EFFECT OF INTERVENTION.—If the Attorney General of the United States intervenes in an action under this subsection, the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

''(C) SERVICE OF PROCESS.—Upon request of the Attorney General of the United States, the attorney general of a State that has filed an action under this subsection shall, pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure, serve the Government with—

''(i) a copy of the complaint; and

''(ii) written disclosure of substantially all material evidence and information in the possession of the attorney general of the State.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under this subsection, nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State—

''(A) to conduct investigations;

''(B) to administer oaths or affirmations; or

''(C) to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General of the United States for a violation of this section, no State may, during the pendency of that action, institute an action under this subsection against any defendant named in the complaint in that action for violation of that practice.

''(5) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—Any action brought under this subsection may be brought in the district court of the United States—

''(i) where the defendant resides;

''(ii) where the defendant is doing business; or

''(iii) that meets applicable requirements relating to venue under section 1391 of title 28.

''(B) SERVICE OF PROCESS.—In an action brought under this subsection, process may be served in any district in which the defendant—

''(i) resides;

''(ii) is doing business; or

''(iii) may be found.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following new item:

''1028A. Treatment of identity theft mitigation.''.

SEC. 4. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT.

(a) CONSUMER REPORTING AGENCY BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.—Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681*i*) is amended by adding at the end the following:

''(e) BLOCK OF INFORMATION RESULTING FROM IDENTITY THEFT.—

''(1) BLOCK.—Except as provided in paragraph (3) and not later than 30 days after the date of receipt of proof of the identity of a consumer and an official copy of a police report evidencing the claim of the consumer of identity theft, a consumer reporting agency shall block the reporting of any information identified by the consumer in the file of the consumer resulting from the identity theft, so that the information cannot be reported.

''(2) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under paragraph (1)—

''(A) that the information may be a result of identity theft;

''(B) that a police report has been filed;

''(C) that a block has been requested under this subsection; and

''(D) of the effective date of the block.

''(3) AUTHORITY TO DECLINE OR RESCIND.—

''(A) IN GENERAL.—A consumer reporting agency may decline to block, or may rescind any block, of consumer information under this subsection if—

''(i) in the exercise of good faith and reasonable judgment, the consumer reporting agency finds that—

''(I) the information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block; or

''(II) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions, or the consumer should have known that the consumer obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions; or

''(ii) the consumer agrees that the blocked information or portions of the blocked information were blocked in error.

''(B) NOTIFICATION TO CONSUMER.—If the block of information is declined or rescinded under this paragraph, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under subsection (a)(5)(B).

''(C) SIGNIFICANCE OF BLOCK.—For purposes of this paragraph, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or monies as a result of the block.

''(4) EXCEPTIONS.—

''(A) NEGATIVE INFORMATION DATA.—A consumer reporting agency shall not be required to comply with this subsection when such agency is issuing information for authorizations, for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment, based solely on negative information, including—

''(i) dishonored checks;

''(ii) accounts closed for cause;

''(iii) substantial overdrafts;

''(iv) abuse of automated teller machines; or

''(v) other information which indicates a risk of fraud occurring.

''(B) RESELLERS.—

''(i) NO RESELLER FILE.—The provisions of this subsection do not apply to a consumer reporting agency if the consumer reporting agency—

''(I) does not maintain a file on the consumer from which consumer reports are produced;

''(II) is not, at the time of the request of the consumer under paragraph (1), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

''(III) informs the consumer, by any means, that the consumer may report the identity theft to the Federal Trade Commission to obtain consumer information regarding identity theft.

''(ii) RESELLER WITH FILE.—The sole obligation of the consumer reporting agency under this subsection, with regard to any request of a consumer under this subsection, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use if—

''(I) the consumer, in accordance with the provisions of paragraph (1), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft;

''(II) the consumer reporting agency is acting as a reseller of the identified information by assembling or merging information about that consumer which is contained in the database of not less than 1 other consumer reporting agency; and

''(III) the consumer reporting agency does not store or maintain a database of information obtained for resale from which new consumer reports are produced.

''(iii) NOTICE.—In carrying out its obligation under clause (ii), the consumer reporting agency shall provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.''.

(b) FALSE CLAIMS.—Section 1028 of title 18, United States Code, is amended by adding at the end the following:

''(j) Any person who knowingly falsely claims to be a victim of identity theft for the purpose of obtaining the blocking of information by a consumer reporting agency under section 611(e)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681*i*(e)(1)) shall be fined under this title, imprisoned not more than 3 years, or both.''.

(c) STATUTE OF LIMITATIONS.—Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

''SEC. 618. JURISDICTION OF COURTS; LIMITATION ON ACTIONS.

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), an action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than 2 years from the date of the defendant's violation of any requirement under this title.

''(b) WILLFUL MISREPRESENTATION.—In any case in which the defendant has materially and willfully misrepresented any information required to be disclosed to an individual under this title, and the information misrepresented is material to the establishment of the liability of the defendant to that individual under this title, an action to enforce a liability created under this title may be brought at any time within 2 years after the date of discovery by the individual of the misrepresentation.

''(c) IDENTITY THEFT.—An action to enforce a liability created under this title may be brought not later than 4 years from the date of the defendant's violation if—

''(1) the plaintiff is the victim of an identity theft; or

''(2) the plaintiff—

''(A) has reasonable grounds to believe that the plaintiff is the victim of an identity theft; and

''(B) has not materially and willfully misrepresented such a claim.''.

SEC. 5. COORDINATING COMMITTEE STUDY OF COORDINATION BETWEEN FEDERAL, STATE, AND LOCAL AUTHORITIES IN ENFORCING IDENTITY THEFT LAWS.

(a) MEMBERSHIP; TERM.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) in subsection (b), by striking ''and the Commissioner of Immigration and Naturalization'' and inserting ''the Commissioner of Immigration and Naturalization, the Chairman of the Federal Trade Commission, the Postmaster General, and the Commissioner of the United States Customs Service,''; and

(2) in subsection (c), by striking ''2 years after the effective date of this Act.'' and inserting ''on December 28, 2004.''.

(b) CONSULTATION.—Section 2 of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d) CONSULTATION.—In discharging its duties, the coordinating committee shall consult with interested parties, including State and local law enforcement agencies, State attorneys general, representatives of business entities (as that term is defined in section 4 of the Identity Theft Victims Assistance Act of 2002), including telecommunications and utility companies, and organizations representing consumers.''.

(c) REPORT DISTRIBUTION AND CONTENTS.—Section 2(e) of the Internet False Identification Prevention Act of 2000 (18 U.S.C. 1028 note) (as redesignated by subsection (b)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury, at the end of each year of the existence of the coordinating committee, shall report on the activities of the coordinating committee to—

''(A) the Committee on the Judiciary of the Senate;

''(B) the Committee on the Judiciary of the House of Representatives;

''(C) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(D) the Committee on Financial Services of the House of Representatives.'';

(2) in subparagraph (E), by striking ''and'' at the end; and

(3) by striking subparagraph (F) and inserting the following:

''(F) a comprehensive description of Federal assistance provided to State and local law enforcement agencies to address identity theft;

''(G) a comprehensive description of coordination activities between Federal, State, and local law enforcement agencies that address identity theft; and

''(H) recommendations in the discretion of the President, if any, for legislative or administrative changes that would—

''(i) facilitate more effective investigation and prosecution of cases involving—

''(I) identity theft; and

''(II) the creation and distribution of false identification documents;

''(ii) improve the effectiveness of Federal assistance to State and local law enforcement agencies and coordination between Federal, State, and local law enforcement agencies; and

''(iii) simplify efforts by a person necessary to rectify the harm that results from the theft of the identity of such person.''.

SA 4955. Mr. REID (for Mr. HELMS (for himself and Mr. LEAHY)) proposed an amendment to the bill H.R. 5469, To amend title 17, United States Code, with respect to the statutory license for webcasting; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Webcaster Settlement Act of 2002''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Some small webcasters who did not participate in the copyright arbitration royalty panel proceeding leading to the July 8, 2002 order of the Librarian of Congress establishing rates and terms for certain digital performances and ephemeral reproductions of sound recordings, as provided in part 261 of the Code of Federal Regulations (published in the Federal Register on July 8, 2002) (referred to in this section as ''small webcasters''), have expressed reservations about the fee structure set forth in such order, and have expressed their desire for a fee based on a percentage of revenue.

(2) Congress has strongly encouraged representatives of copyright owners of sound recordings and representatives of the small webcasters to engage in negotiations to arrive at an agreement that would include a fee based on a percentage of revenue.

(3) The representatives have arrived at an agreement that they can accept in the extraordinary and unique circumstances here presented, specifically as to the small webcasters, their belief in their inability to pay the fees due pursuant to the July 8 order, and as to the copyright owners of sound recordings and performers, the strong encouragement of Congress to reach an accommodation with the small webcasters on an expedited basis.

(4) The representatives have indicated that they do not believe the agreement provides for or in any way approximates fair or reasonable royalty rates and terms, or rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.

(5) Congress has made no determination as to whether the agreement provides for or in any way approximates fair or reasonable fees and terms, or rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.

(6) Congress likewise has made no determination as to whether the July 8 order is reasonable or arbitrary, and nothing in this Act shall be taken into account by the United States Court of Appeals for the District of Columbia Circuit in its review of such order.

(7) It is, nevertheless, in the public interest for the parties to be able to enter into such an agreement without fear of liability for deviating from the fees and terms of the July 8 order, if it is clear that the agreement will not be admissible as evidence or otherwise taken into account in any government proceeding involving the setting or adjustment of the royalties payable to copyright owners of sound recordings for the public performance or reproduction in ephemeral phonorecords or copies of such works, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements.

SEC. 3. SUSPENSION OF CERTAIN PAYMENTS.

(a) NONCOMMERCIAL WEBCASTERS.—

(1) IN GENERAL.—The payments to be made by noncommercial webcasters for the digital performance of sound recordings under section 114 of title 17, United States Code, and the making of ephemeral phonorecords under section 112 of title 17, United States Code, during the period beginning on October 28, 1998, and ending on May 31, 2003, which have not already been paid, shall not be due until June 20, 2003.

(2) DEFINITION.—In this subsection, the term ''noncommercial webcaster'' has the meaning given that term in section 114(f)(5)(E)(i) of title 17, United States Code, as added by section 4 of this Act.

(b) SMALL COMMERCIAL WEBCASTERS.—

(1) IN GENERAL.—The receiving agent may, in a writing signed by an authorized representative thereof, delay the obligation of any 1 or more small commercial webcasters to make payments pursuant to sections 112 and 114 of title 17, United States Code, for a period determined by such entity to allow negotiations as permitted in section 4 of this Act, except that any such period shall end no later than December 15, 2002. The duration and terms of any such delay shall be as set forth in such writing.

(2) DEFINITIONS.—In this subsection—

(A) the term ''webcaster'' has the meaning given that term in section 114(f)(5)(E)(iii) of title 17, United States Code, as added by section 4 of this Act; and

(B) the term ''receiving agent'' shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002.

SEC. 4. AUTHORIZATION FOR SETTLEMENTS.

Section 114(f) of title 17, United States Code, is amended by adding after paragraph (4) the following:

''(5)(A) Notwithstanding section 112(e) and the other provisions of this subsection, the receiving agent may enter into agreements for the reproduction and performance of sound recordings under section 112(e) and this section by any 1 or more small commercial webcasters or noncommercial webcasters during the period beginning on October 28, 1998, and ending on December 31, 2004, that, once published in the Federal Register pursuant to subparagraph (B), shall be binding on all copyright owners of sound recordings and other persons entitled to payment under this section, in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress. Any such agreement for small commercial webcasters shall include provisions for payment of royalties on the basis of a percentage of revenue or expenses, or both, and include a minimum fee. Any such agreement may include other terms and conditions, including requirements by which copyright owners may receive notice of the use of their sound recordings and under which records of such use shall be kept and made available by small commercial webcasters or noncommercial webcasters. The receiving agent shall be under no obligation to negotiate any such agreement. The receiving agent shall have no obligation to any copyright owner of sound recordings or any other person entitled to payment under this section in negotiating any such agreement, and no liability to any copyright owner of sound recordings or any other person entitled to payment under this section for having entered into such agreement.

''(B) The Copyright Office shall cause to be published in the Federal Register any agreement entered into pursuant to subparagraph (A). Such publication shall include a statement containing the substance of subparagraph (C). Such agreements shall not be included in the Code of Federal Regulations. Thereafter, the terms of such agreement shall be available, as an option, to any small commercial webcaster or noncommercial webcaster meeting the eligibility conditions of such agreement.

''(C) Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Librarian of Congress under paragraph (4) or section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b).

''(D) Nothing in the Small Webcaster Settlement Act of 2002 or any agreement entered into pursuant to subparagraph (A) shall be taken into account by the United States Court of Appeals for the District of Columbia Circuit in its review of the determination by the Librarian of Congress of July 8, 2002, of rates and terms for the digital performance of sound recordings and ephemeral recordings, pursuant to sections 112 and 114.

''(E) As used in this paragraph—

''(i) the term 'noncommercial webcaster' means a webcaster that—

''(I) is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

''(II) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

''(III) is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes;

''(ii) the term 'receiving agent' shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002; and

''(iii) the term 'webcaster' means a person or entity that has obtained a compulsory license under section 112 or 114 and the implementing regulations therefor to make eligible nonsubscription transmissions and ephemeral recordings.

''(F) The authority to make settlements pursuant to subparagraph (A) shall expire December 15, 2002, except with respect to noncommercial webcasters for whom the authority shall expire May 31, 2003.''.

SEC. 5. DEDUCTIBILITY OF COSTS AND EXPENSES OF AGENTS AND DIRECT PAYMENT TO ARTISTS OF ROYALTIES FOR DIGITAL PERFORMANCES OF SOUND RECORDINGS.

(a) FINDINGS.—Congress finds that—

(1) in the case of royalty payments from the licensing of digital transmissions of sound recordings under subsection (f) of section 114 of title 17, United States Code, the parties have voluntarily negotiated arrangements under which payments shall be made directly to featured recording artists and the administrators of the accounts provided in subsection (g)(2) of that section;

(2) such voluntarily negotiated payment arrangements have been codified in regulations issued by the Librarian of Congress, currently found in section 261.4 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002;

(3) other regulations issued by the Librarian of Congress were inconsistent with the voluntarily negotiated arrangements by such parties concerning the deductibility of certain costs incurred for licensing and arbitration, and Congress is therefore restoring those terms as originally negotiated among the parties; and

(4) in light of the special circumstances described in this subsection, the uncertainty created by the regulations issued by the Librarian of Congress, and the fact that all of the interested parties have reached agreement, the voluntarily negotiated arrangements agreed to among the parties are being codified.

(b) DEDUCTIBILITY.—Section 114(g) of title 17, United States Code, is amended by adding after paragraph (2) the following:

''(3) A nonprofit agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts to any person or entity entitled thereto other than copyright owners and performers who have elected to receive royalties from another designated agent and have notified such nonprofit agent in writing of such election, the reasonable costs of such agent incurred after November 1, 1995, in—

''(A) the administration of the collection, distribution, and calculation of the royalties;

''(B) the settlement of disputes relating to the collection and calculation of the royalties; and

''(C) the licensing and enforcement of rights with respect to the making of ephemeral recordings and performances subject to licensing under section 112 and this section, including those incurred in participating in negotiations or arbitration proceedings under section 112 and this section, except that all costs incurred relating to the section 112 ephemeral recordings right may only be deducted from the royalties received pursuant to section 112.

''(4) Notwithstanding paragraph (3), any designated agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts, the reasonable costs identified in paragraph (3) of such agent incurred after November 1, 1995, with respect to such copyright owners and performers who have entered with such agent a contractual relationship that specifies that such costs may be deducted from such royalty receipts.''.

(c) DIRECT PAYMENT TO ARTISTS.—Section 114(g)(2) of title 17, United States Code, is amended to read as follows:

''(2) An agent designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) shall distribute such receipts as follows:

''(A) 50 percent of the receipts shall be paid to the copyright owner of the exclusive right under section 106(6) of this title to publicly perform a sound recording by means of a digital audio transmission.

''(B) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings.

''(C) 2½ percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation of Television and Radio Artists) who have performed on sound recordings.

''(D) 45 percent of the receipts shall be paid, on a per sound recording basis, to the recording artist or artists featured on such sound recording (or the persons conveying rights in the artists' performance in the sound recordings).''.

SEC. 6. REPORT TO CONGRESS.

By not later than June 1, 2004, the Comptroller General of the United States, in consultation with the Register of Copyrights, shall conduct and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a study concerning the economic arrangements among small commercial webcasters covered by agreements entered into pursuant to section 114(f)(5)(A) of title 17, United States Code, as added by section 4 of this Act, and third parties, and the effect of those arrangements on royalty fees payable on a percentage of revenue or expense basis.

SA 4956. Mr. REID (for Mr. HAGEL (for himself, Mr. BIDEN, and Mr. HELMS)) proposed an amendment to the bill S. 2712, to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries; as follows:

On page 39, line 20, strike ''and''.

On page 39, line 24, strike the period and insert ''; and''.

On page 39, after line 24, insert the following:

(9) Foster the growth of a pluralistic society that promotes and respects religious freedom.

Beginning on page 40, strike line 1 and all that follows through line 15 on page 41.

On page 41, line 16, strike ''sec. 104.'' and insert ''sec. 1035.''. Starting on line 17, strike ''any other provision of law,'' and insert ''section 512 of P.L. 107–115 or any other similar provision of law.''

On page 42, line 7, insert ''and other unexploded ordinance'' after ''landmines''.

On page 44, lines 24 and 25, strike ''2002 through 2005'' and insert ''2003 through 2006''.

Beginning on page 44, line 25, strike ''of the amount'' and all that follows through ''authorized'' on line 1 of page 45 and insert ''is authorized to be appropriated to the President''.

On page 47, line 6, insert ''(including repairing homes damaged during military operations)'' after ''housing''.

On page 48, line 11, insert ''including religious freedom,'' after ''awareness,''.

On page 48, line 16, insert '', including the recognition of religious freedom in the constitution and other legal frameworks,'' after ''Afghanistan''.

On page 49, line 4, insert '', including religious freedom, freedom of expression, and freedom of association,'' after ''rights''.

On page 49, between lines 5 and 6, insert:

(x) support for Afghan and international efforts to investigate human rights atrocities committed in Afghanistan by the Taliban regime, opponents of such regime, and terrorist groups operating in Afghanistan, including the collection of forensic evidence relating to such atrocities;

On page 49, line 6, strike ''(x)'' and insert ''(xi)''.

On page 49, line 8, strike ''(xi)'' and insert ''(xii)''.

On page 49, line 12, strike ''(xii)'' and insert ''(xiii)''.

On page 49, line 14, strike ''(xiii)'' and insert ''(xiv)''.

On page 49, line 21, strike ''not less than''.

On page 49, beginning on line 21, strike ''of the'' and all that follows through ''should'' on line 22 and insert ''is authorized to be appropriated to the President to''.

On page 50, line 23, strike ''and''.

On page 50, after line 23, insert the following:

(E) develop handicraft and other small-scale industries; and

On page 51, line 1, strike ''(E)'' and insert ''(F)''.

On page 53, line 2, insert '', including the rights of religious freedom, freedom of expression, and freedom of association,'' after ''rights''.

On page 53, line 8, insert '', including the rights of religious freedom, freedom of expression, and freedom of association,'' after ''human rights''.

On page 53, line 12, strike ''2002 through 2005'' and insert ''2003 through 2006''.

On page 53, beginning on line 13, strike ''of'' and all that follows through ''authorized'' on line 15 and insert ''is authorized to be appropriated to the President''.

On page 53, beginning on line 18, strike ''of'' and all that follows through ''authorized'' on line 20 and insert ''is authorized to be appropriated to the President''.

On page 54, line 12, insert ''that respects human rights'' after ''Afghanistan''.

On page 55, beginning on line 5, strike ''for fiscal year'' and all that follows through ''2005'' on lines 7.

On page 55, line 17, strike ''sec. 105.'' and insert ''sec. 104.''.

On page 56, between lines 14 and 15, insert the following:

SEC. 105. SENSE OF CONGRESS REGARDING PROMOTING COOPERATION IN OPIUM PRODUCING AREAS.

It is the sense of Congress that the President should—

(1) to the extent practicable, under such procedures as the President may prescribe, withhold United States bilateral assistance from, and oppose multilateral assistance to, opium-producing areas of Afghanistan if, within such areas, appropriate cooperation is not provided to the United States, the Government of Afghanistan, and international organizations with respect to the suppression of narcotics cultivation and trafficking, and if withholding such assistance would promote such cooperation;

(2) redistribute any United States bilateral assistance (and to promote the redistribution of any multilateral assistance) withheld

from an opium-producing area to other areas with respect to which assistance has not been withheld as a consequence of this section; and

(3) define or redefine the boundaries of opium producing areas of Afghanistan for the purposes of this section.

On page 57, line 14, strike ''LAND GRANT''.

On page 57, line 22, strike ''land grant''.

On page 58, beginning with line 1, strike ''Amounts'' and all that follows through the period on line 5 and insert the following: ''Of the funds made available to carry out the purposes of assistance authorized by this title in any fiscal year, up to 7 percent may be used for administrative expenses of Federal departments and agencies in connection with the provision of such assistance.''.

On page 58, line 11, strike ''(A) IN GENERAL.—''.

On page 58, strike lines 17 through 20.

On page 59, line 8, strike ''$500,000,000'' and insert ''$425,000,000''.

On page 59, line 9, strike ''2002 through 2005'' and insert ''2003 through 2006''.

On page 61, line 20, insert ''and shall not count toward any limitation contained in section 506 of the Foreign Assistance Act of 1961 (22 U.S.C. 2318)'' after section 204(b)(1)''.

On page 61, strike line 23.

On page 61, line 24, strike ''(1) IN GENERAL.—'' and insert ''(a) IN GENERAL.—''.

On page 61, lines 24 and 25, strike ''paragraph (2)'' and insert ''subsection (b)''.

On page 62, line 3, strike ''(A)'' and insert ''(1)''.

On page 62, line 8, strike ''(B)'' and insert ''(2)''.

On page 62, line 10, strike ''(2)'' and insert ''(b)''.

On page 62, line 12, after ''repeatedly,'' insert ''engaged in gross violations of human rights, or''

On page 62, strike lines 19 through 22.

On page 63, lines 15 and 16, strike ''are authorized to remain available until expended, and''.

Beginning on page 64, strike line 9 and all that follows through line 22 on page 68 and insert the following:

SEC. 206. PROMOTING SECURE DELIVERY OF HUMANITARIAN AND OTHER ASSISTANCE IN AFGHANISTAN AND EXPANSION OF THE INTERNATIONAL SECURITY ASSISTANCE FORCE.

(a) FINDINGS.—Congress finds the following:

(1) The President has declared his view that the United States should provide significant assistance to Afghanistan so that it is no longer a haven for terrorism.

(2) The delivery of humanitarian and reconstruction assistance from the international community is necessary for the safe return of refugees and is critical to the future stability of Afghanistan.

(3) Enhanced stability in Afghanistan through an improved security environment is critical to the functioning of the Government of Afghanistan and the traditional Afghan assembly or ''Loya Jirga'' process, which is intended to lead to a permanent national government in Afghanistan, and also is essential for the participation of women in Afghan society.

(4) Incidents of violence between armed factions and local and regional commanders, and serious abuses of human rights, including attacks on women and ethnic minorities throughout Afghanistan, create an insecure, volatile, and unsafe environment in parts of Afghanistan, displacing thousands of Afghan civilians from their local communities.

(5)(A) On July 6, Vice President Haji Abdul Qadir was assassinated in Kabul by unknown assailants.

(B) On September 5, 2002, a car bomb exploded in Kabul killing 32 and injuring 150 and on the same day a member of Kandahar Governor Sherzai's security team attempted to assassinate President Karzai.

(6) The violence and lawlessness may jeopardize the ''Loya Jirga'' process, undermine efforts to build a strong central government, severely impede reconstruction and the delivery of humanitarian assistance, and increase the likelihood that parts of Afghanistan will once again become safe havens for al-Qaida, Taliban forces, and drug traffickers.

(7) The lack of security and lawlessness may also perpetuate the need for United States Armed Forces in Afghanistan and threaten the ability of the United States to meet its military objectives.

(8) The International Security Assistance Force in Afghanistan, currently led by Turkey, and composed of forces from other willing countries without the participation of United States Armed Forces, is deployed only in Kabul and currently does not have the mandate or the capacity to provide security to other parts of Afghanistan.

(9) Due to the ongoing military campaign in Afghanistan, the United States does not contribute troops to the International Security Assistance Force but has provided support to other countries that are doing so.

(10) The United States is providing political, financial, training, and other assistance to the Afghan Interim Authority as it begins to build a national army and police force to help provide security throughout Afghanistan, but this effort is not meeting the immediate security needs of Afghanistan.

(11) Because of these immediate security needs, the Government of Afghanistan, its President, Hamid Karzai, and many Afghan regional leaders have called for the International Security Assistance Force, which has successfully brought stability to Kabul, to be expanded and deployed throughout the country, and this request has been strongly supported by a wide range of international humanitarian organizations, including the International Committee of the Red Cross, Catholic Relief Services, and Refugees International.

(b) STATEMENT OF POLICY.—It should be the policy of the United States to support measures to help meet the immediate security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government.

(c) IMPLEMENTATION OF STRATEGY.—

(1) INITIAL REPORT.—Not later than 60 days after the date of the enactment of this Act, the President shall provide the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate with—

(A) a strategy for meeting the immediate and long-term security needs of Afghanistan in order to promote safe and effective delivery of humanitarian and other assistance throughout Afghanistan, further the rule of law and civil order, and support the formation of a functioning, representative Afghan national government, including an update to the strategies submitted pursuant to Public Law 107–206; and

(B) a description of the progress of the Government of Afghanistan toward the eradication of poppy cultivation, the disruption of heroin production, and the reduction of the overall supply and demand for illicit narcotics in Afghanistan in accordance with the provisions of this Act.

(2) IMPLEMENTATION OF STRATEGY.—Every 6 months after the enactment of this Act through January 1, 2007, the President shall submit to the congressional committees specified in paragraph (1) a report on the implementation of the strategies for meeting the immediate and long-term security needs of Afghanistan, which shall include the following elements—

(A) since the previous report, the progress in recruiting, training, and deploying an Afghan National Army and police force, including the numbers and ethnic composition of recruits; the number of graduates from military and police training; the numbers of graduates retained by the Afghan National Army and police forces since the previous report; the numbers of graduates operationally deployed and to which areas of the country; the degree to which these graduates are assuming security responsibilities; whether Afghan army and police units are establishing effective central governmental authority over areas of the country, and which areas; and the numbers of instances of armed attacks against Afghan central governmental officials, United States or international officials, troops or aid workers, or between the armed forces of regional leaders;

(B) the degree to which armed regional leaders are cooperating and integrating with the central government, providing security and order within their regions of influence, engaging in armed conflict or other forms of competition that are deleterious to peace, security, and the integration of a unified Afghanistan under the central government;

(C) the amount of humanitarian relief provided since the previous report to returnees, isolated populations and other vulnerable groups, as well as demining assistance and landmine survivors rehabilitation; and the numbers of such persons not assisted since the previous report;

(D) the steps taken since the previous report toward national reconstruction, including establishment of the ministries and other institutions of the Government of Afghanistan;

(E) the numbers of Civil Affairs Teams working with regional leaders, as well as the quick impact infrastructure projects undertaken by such teams since the previous report;

(F) efforts undertaken since the previous report to rebuild the justice sector, including the establishment of a functioning judiciary, a competent bar, reintegration of women legal professionals and a reliable penal system, and the respect for human rights; and

(G) a description of the progress of the Government of Afghanistan with respect to the matters described in paragraph (1)(B).

(d) EXPANSION OF THE INTERNATIONAL SECURITY ASSISTANCE FORCE.—

(1) SENSE OF CONGRESS.—Congress urges the President, in order to fulfill the objective of establishing security in Afghanistan, to take all appropriate measures to assist Afghanistan establish a secure environment throughout the country, including by—

(A) sponsoring in the United Nations Security Council a resolution authorizing an expansion of the International Security Assistance Force, or the establishment of a similar security force; and

(B) enlisting the European and other allies of the United States to provide forces for an expansion of the International Security Assistance Force in Afghanistan, or the establishment of a similar security force.

(2) AUTHORIZATION OF APPROPRIATIONS.—(A) There is authorized to be appropriated to the President $500,000,000 for each of fiscal years 2003 and 2004 to support the International Security Assistance Force or the establishment of a similar security force.

(B) Amounts made available under subparagraph (A) may be appropriated pursuant

to chapter 4 of part II of the Foreign Assistance Act of 1961, section 551 of such Act, or section 23 of the Arms Export Control Act.

(C) Funds appropriated pursuant to subparagraph (A) shall be subject to the notification requirements under section 634A of the Foreign Assistance Act of 1961.

On page 63, line 24, insert ''and the Committee on Appropriations'' after ''Relations''.

On page 63, line 25, insert ''and the Committee on Appropriations'' after ''Relations''.

On page 69, line 5, strike ''any other provision of law'' and insert ''section 512 of Public Law 107–115 or any similar provision of law''.

Beginning on page 69, strike line 6 and all that follows through line 4 on page 70.

On page 70, line 5, strike ''sec. 209.'' and insert '' sec. 208.''

On page 70, line 7, strike ''2005'' and insert ''2006''.

On page 70, after line 7, add the following:

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. REQUIREMENT TO COMPLY WITH PROCEDURES RELATING TO THE PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS.

Assistance provided under this Act shall be subject to the same provisions as are applicable to assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act under section 487 of the Foreign Assistance Act of 1961 (relating to the prohibition on assistance to drug traffickers; 22 U.S.C. 2291f), and the applicable regulations issued under that section.

SEC. 302. SENSE OF CONGRESS REGARDING PROTECTING AFGHANISTAN'S PRESIDENT.

It is the sense of Congress that—

(1) any United States physical protection force provided for the personal security of the President of Afghanistan should be composed of United States diplomatic security, law-enforcement, or military personnel, and should not utilize private contracted personnel to provide actual physical protection services;

(2) United States allies should be invited to volunteer active-duty military or law enforcement personnel to participate in such a protection forces; and

(3) such a protection force should be limited in duration and should be succeeded by qualified Afghan security forces as soon as practicable.

SEC. 303. DONOR CONTRIBUTIONS TO AFGHANISTAN AND REPORTS.

(a) FINDINGS.—The Congress finds that inadequate amounts of international assistance promised by donor states at the Tokyo donors conference and elsewhere have been delivered to Afghanistan, imperiling the rebuilding and development of civil society and infrastructure, and endangering peace and security in that war-torn country.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should use all appropriate diplomatic means to encourage all states that have pledged assistance to Afghanistan to deliver as soon as possible the total amount of assistance pledged.

(c) REPORTS.—

(1) IN GENERAL.—The Secretary of State shall submit reports to the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives, in accordance with this paragraph, on the status of contributions of assistance from donor states to Afghanistan. The first report shall be submitted not later than 60 days after the date of enactment of this Act, the second report shall be submitted 90 days thereafter, and subsequent reports shall be submitted every 180 days thereafter through December 31, 2004.

(2) FURTHER REQUIREMENTS.—Each report, which shall be unclassified and posted upon the Department of State's Internet website, shall include, by donor country, the total amount pledged, the amount delivered within the previous 60 days, the total amount of assistance delivered, the type of assistance and type of projects supported by the assistance.

SA 4957. Mr. REID (for Mr. KERRY (for himself, Mr. BROWNBACK, and Mr. HOLLINGS)) proposed an amendment to the bill S. 2869, to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers; as follows:

SECTION 1. RELIEF FROM CONTINUING OBLIGATIONS.

A winner bidder to which the Commission has not granted an Auction 35 license may irrevocably elect to relinquish any right, title, or interest in that license and the associated license application by formal written notice to the Commission. Such an election may only be made within 30 days after the date of enactment of this Act. A winning bidder that makes such an election shall be free of any obligation the winning bidder would otherwise have with respect to that license, the associated license application, and the associated winning bid, including the obligation to pay the amount of its winning bid that would be otherwise due for such license.

SEC. 2. RETURN OF DEPOSITS AND DOWNPAYMENTS.

Within 37 days after receiving an election that meets the requirements of section 3 from an Auction 35 winning bidder that has made the election described in section 1, the Commission shall refund any deposit or down-payment made with respect to a winning bidder for the license that is the subject of the election.

SEC. 3. COMMISSION TO ISSUE PUBLIC NOTICE.

(a) PUBLIC NOTICE.—Within 5 days after the date of enactment of this Act, the Commission shall issue a public notice specifying the form and the process for the return of deposits and downpayments under section 2.

(b) TIME FOR ELECTION.—An election under this section is not valid unless it is made within 30 days after the date of enactment of this Act.

SEC. 4. WAIVER OF PAPERWORK REDUCTION ACT REQUIREMENTS.

Section 3507 of title 44, United States Code, shall not apply to the Commission's implementation of this Act.

SEC. 5. NO INFERENCE WITH RESPECT TO NEXTWAVE CASE.

It is the sense of the Congress that no inference with respect to any issue of law or fact in Federal Communications Commission v. NextWAVE Personal Communications, Inc., et al. (Supreme Court Docket No. 01–653) should be drawn from the introduction, amendment, defeat, or enactment of this Act.

SEC. 6. DEFINITIONS.

In this Act:

(1) AUCTION 35.—The term ''Auction 35'' means the C and F block broadband personal communications service spectrum auction of the Commission that began on December 1, 2000, and ended on January 6, 2001, insofar as that auction related to spectrum previously licensed to NextWave Personal Communications, Inc., NextWave Power Partners, Inc., or Urban Comm North Carolina, Inc.

(2) COMMISSION.—The term ''Commission'' means the Federal Communications Commission or a bureau or division thereof acting on delegated authority.

(3) WINNING BIDDER.—The term ''winning bidder'' means any person who is entitled under Commission order FCC 02–99 (released March 27, 2002), to a refund of a substantial portion of monies on deposit for spectrum formerly licensed to NextWave and Urban Comm as defined in that order.

SA 4958. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, Mr. HOLLINGS, and Mr. FRIST)) proposed an amendment to the bill H.R. 4664, An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Science Foundation Authorization Act of 2002''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The National Science Foundation has made major contributions for more than 50 years to strengthen and sustain the Nation's academic research enterprise that is the envy of the world.

(2) The economic strength and national security of the United States and the quality of life of all Americans are grounded in the Nation's scientific and technological capabilities.

(3) The National Science Foundation carries out important functions in supporting basic research in all science and engineering disciplines and in supporting science, mathematics, engineering, and technology education at all levels.

(4) The research and education activities of the National Science Foundation promote the discovery, integration, dissemination, and application of new knowledge in service to society and prepare future generations of scientists, mathematicians, and engineers who will be necessary to ensure America's leadership in the global marketplace.

(5) The National Science Foundation must be provided with sufficient resources to enable it to carry out its responsibilities to develop intellectual capital, strengthen the scientific infrastructure, integrate research and education, enhance the delivery of mathematics and science education in the United States, and improve the technological literacy of all people in the United States.

(6) The emerging global economic, scientific, and technical environment challenges long-standing assumptions about domestic and international policy, requiring the National Science Foundation to play a more proactive role in sustaining the competitive advantage of the United States through superior research capabilities.

(7) Commercial application of the results of Federal investment in basic and computing science is consistent with long-standing United States technology transfer policy and is a critical national priority, particularly with regard to cybersecurity and other homeland security applications, because of the urgent needs of commercial, academic, and individual users as well as the Federal and State Governments.

SEC. 3. POLICY OBJECTIVES.

In allocating resources made available under section 5, the Foundation shall have the following policy objectives:

(1) To strengthen the Nation's lead in science and technology by—

(A) increasing the national investment in general scientific research and increasing investment in strategic areas;

(B) balancing the Nation's research portfolio among the life sciences, mathematics, the physical sciences, computer and information science, geoscience, engineering, and social, behavioral, and economic sciences, all of which are important for the continued development of enabling technologies necessary for sustained international competitiveness;

(C) expanding the pool of scientists and engineers in the United States;

(D) modernizing the Nation's research infrastructure; and

(E) establishing and maintaining cooperative international relationships with premier research institutions, with the goal of such relationships being the exchange of personnel, data, and information in an effort to alleviate problems common to the global community.

(2) To increase overall workforce skills by—

(A) improving the quality of mathematics and science education, particularly in kindergarten through grade 12;

(B) promoting access to information technology for all students;

(C) raising postsecondary enrollment rates in science, mathematics, engineering, and technology disciplines for individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b);

(D) increasing access to higher education in science, mathematics, engineering, and technology fields for students from low-income households; and

(E) expanding science, mathematics, engineering, and technology training opportunities at institutions of higher education.

(3) To strengthen innovation by expanding the focus of competitiveness and innovation policy at the regional and local level.

SEC. 4. DEFINITIONS.

In this Act:

(1) ACADEMIC UNIT.—The term ''academic unit'' means a department, division, institute, school, college, or other subcomponent of an institution of higher education.

(2) BOARD.—The term ''Board'' means the National Science Board established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(3) COMMUNITY COLLEGE.—The term ''community college'' has the meaning given such term in section 3301(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7011(3)).

(4) DIRECTOR.—The term ''Director'' means the Director of the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(5) ELEMENTARY SCHOOL.—The term ''elementary school'' has the meaning given that term by section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

(6) ELIGIBLE NONPROFIT ORGANIZATION.—The term ''eligible nonprofit organization'' means a nonprofit research institute, or a nonprofit professional association, with demonstrated experience and effectiveness in mathematics or science education as determined by the Director.

(7) FOUNDATION.—The term ''Foundation'' means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

(8) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term ''high-need local educational agency'' means a local educational agency that meets one or more of the following criteria:

(A) It has at least one school in which 50 percent or more of the enrolled students are eligible for participation in the free and reduced price lunch program established by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) It has at least one school in which—

(i) more than 34 percent of the academic classroom teachers at the secondary level (across all academic subjects) do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes; or

(ii) more than 34 percent of the teachers in two of the academic departments do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes.

(C) It has at least one school whose teacher attrition rate has been 15 percent or more over the last three school years.

(9) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(10) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given such term by section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)).

(11) MASTER TEACHER.—The term ''master teacher'' means a mathematics or science teacher who works to improve the instruction of mathematics or science in kindergarten through grade 12 through—

(A) participating in the development or revision of science, mathematics, engineering, or technology curricula;

(B) serving as a mentor to mathematics or science teachers;

(C) coordinating and assisting teachers in the use of hands-on inquiry materials, equipment, and supplies, and when appropriate, supervising acquisition and repair of such materials;

(D) providing in-classroom teaching assistance to mathematics or science teachers; and

(E) providing professional development, including for the purposes of training other master teachers, to mathematics and science teachers.

(12) NATIONAL RESEARCH FACILITY.—The term ''national research facility'' means a research facility funded by the Foundation which is available, subject to appropriate policies allocating access, for use by all scientists and engineers affiliated with research institutions located in the United States.

(13) SECONDARY SCHOOL.—The term ''secondary school'' has the meaning given that term by section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

(14) STATE.—Except with respect to the Experimental Program to Stimulate Competitive Research, the term ''State'' means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

(15) STATE EDUCATIONAL AGENCY.—The term ''State educational agency'' has the meaning given such term by section 9101(41) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(41)).

(16) UNITED STATES.—The term ''United States'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEAR 2003.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $5,536,390,000 for fiscal year 2003.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $4,155,690,000 shall be made available to carry out research and related activities, of which $704,000,000 shall be for information technology research described in paragraph (1) of section 8 and $301,000,000 shall be for nanoscale science and engineering described in paragraph (2) of section 8;

(B) $1,006,250,000 shall be made available for education and human resources, of which—

(i) $200,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $25,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $172,050,000 shall be made available for major research equipment and facilities construction;

(D) $191,200,000 shall be made available for salaries and expenses;

(E) $3,500,000 shall be made available for the Office of the National Science Board, including salaries and compensation for members of the Board and staff appointed under section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863), travel and training costs for members of the Board and such staff, general and Board operating expenses, representational expenses for the Board, honorary awards made by the Board, Board reports (other than the report entitled ''Science and Engineering Indicators''), and contracts; and

(F) $7,700,000 shall be made available for the Office of Inspector General.

(b) FISCAL YEAR 2004.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $6,390,832,000 for fiscal year 2004.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $4,799,822,000 shall be made available to carry out research and related activities, of which $774,000,000 shall be for information technology research described in paragraph (1) of section 8 and $350,000,000 shall be for nanoscale science and engineering described in paragraph (2) of section 8;

(B) $1,157,188,000 shall be made available for education and human resources, of which—

(i) $300,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $30,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $211,182,000 shall be made available for major research equipment and facilities construction;

(D) $210,320,000 shall be made available for salaries and expenses;

(E) $3,850,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2)(E); and

(F) $8,470,000 shall be made available for the Office of Inspector General.

(c) FISCAL YEAR 2005.—

(1) IN GENERAL.—There are authorized to be appropriated to the Foundation $7,378,343,000 for fiscal year 2005.

(2) SPECIFIC ALLOCATIONS.—Of the amount authorized under paragraph (1)—

(A) $5,543,794,000 shall be made available to carry out research and related activities;

(B) $1,330,766,000 shall be made available to carry out education and human resources, of which—

(i) $400,000,000 shall be for mathematics and science education partnerships described in section 9;

(ii) $20,000,000 shall be for the Robert Noyce Scholarship Program described in section 10; and

(iii) $35,000,000 shall be for the science, mathematics, engineering, and technology talent expansion program described in paragraph (7) of section 8;

(C) $258,879,000 shall be made available for major research equipment and facilities construction;

(D) $231,337,000 shall be made available for salaries and expenses;

(E) $4,250,000 shall be made available for the Office of the National Science Board for the purposes described in subsection (a)(2)(E); and

(F) $9,317,000 shall be made available for the Office of Inspector General.

(d) FISCAL YEAR 2006.—There are authorized to be appropriated to the Foundation $8,519,776,000 for fiscal year 2006.

(e) FISCAL YEAR 2007.—There are authorized to be appropriated to the Foundation $9,839,262,000 for fiscal year 2007.

(f) CONTINGENT AUTHORIZATION.—

(1) IN GENERAL.—Funds are authorized to be appropriated under subsections (d) and (e), contingent on a determination by Congress that the Foundation has made successful progress toward meeting management goals consisting of—

(A) strategic management of human capital;

(B) competitive sourcing;

(C) improved financial performance;

(D) expanded electronic government; and

(E) budget and performance integration.

(2) CONSIDERATION.—In making that determination, Congress shall take into consideration whether or not the Director of the Office of Management and Budget has certified that the Foundation has, overall, made successful progress toward meeting those goals.

SEC. 6. OBLIGATION OF MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION FUNDS.

(a) FISCAL YEAR 2003.—None of the funds authorized under section 5(a)(2)(C) may be obligated until 30 days after the first report required under section 14(a)(2) is transmitted to the Congress.

(b) FISCAL YEAR 2004.—None of the funds authorized under section 5(b)(2)(C) may be obligated until 30 days after the report required by June 15, 2003, under section 14(a)(2) is transmitted to the Congress.

(c) FISCAL YEAR 2005.—None of the funds authorized under section 5(c)(2)(C) may be obligated until 30 days after the report required by June 15, 2004, under section 14(a)(2) is transmitted to the Congress.

(d) FISCAL YEAR 2006.—None of the funds authorized under section 5(d) may be obligated for major research equipment and facilities construction until 30 days after the report required by June 15, 2005, under section 14(a)(2) is transmitted to the Congress.

(e) FISCAL YEAR 2007.—None of the funds authorized under section 5(e) may be obligated for major research equipment and facilities construction until 30 days after the report required by June 15, 2006, under section 14(a)(2) is transmitted to the Congress.

SEC. 7. ANNUAL PLAN FOR ALLOCATION OF FUNDING.

Not later than 60 days after the date of enactment of legislation providing for the annual appropriation of funds for the Foundation, the Director shall submit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, a plan for the allocation of funds authorized by this Act for the corresponding fiscal year. The portion of the plan pertaining to Research and Related Activities shall include a description of how the allocation of funding—

(1) will affect the average size and duration of research grants supported by the Foundation by field of science, mathematics, and engineering;

(2) will affect trends in research support for major fields and subfields of science, mathematics, and engineering, including for emerging multidisciplinary research areas; and

(3) is designed to achieve an appropriate balance among major fields and subfields of science, mathematics, and engineering.

SEC. 8. SPECIFIC PROGRAM AUTHORIZATIONS.

From amounts authorized to be appropriated under section 5, the Director shall carry out the Foundation's research and education programs, including the following initiatives in accordance with this section:

(1) INFORMATION TECHNOLOGY.—An information technology research program to support competitive, merit-reviewed proposals for research, education, and infrastructure support in areas related to cybersecurity, terascale computing systems, software, networking, scalability, communications, data management, and remote sensing and geospatial information technologies.

(2) NANOSCALE SCIENCE AND ENGINEERING.—A nanoscale science and engineering research and education program to support competitive, merit-reviewed proposals that emphasize—

(A) research aimed at discovering novel phenomena, processes, materials, and tools that address grand challenges in materials, electronics, optoelectronics and magnetics, manufacturing, the environment, and health care; and

(B) supporting new research and interdisciplinary centers and networks of excellence, including shared national user facilities, infrastructure, research, and education activities on the societal implications of advances in nanoscale science and engineering.

(3) PLANT GENOME RESEARCH.—(A) A plant genome research program to support competitive, merit-reviewed proposals—

(i) that advance the understanding of the structure, organization, and function of plant genomes; and

(ii) that accelerate the use of new knowledge and innovative technologies toward a more complete understanding of basic biological processes in plants, especially in economically important plants such as corn and soybeans.

(B) Regional plant genome and gene expression research centers to conduct research and dissemination activities that may include—

(i) basic plant genomics research and genomics applications, including those related to cultivation of crops in extreme environments and to cultivation of crops with reduced reliance on fertilizer, herbicides, and pesticides;

(ii) basic research that will contribute to the development or use of innovative plant-derived products;

(iii) basic research on alternative uses for plants and plant materials, including the use of plants as renewable feedstock for alternative energy production and nonpetroleum-based industrial chemicals and precursors; and

(iv) basic research and dissemination of information on the ecological and other consequences of genetically engineered plants.

Competitive, merit-based awards for centers under this subparagraph shall be to consortia of institutions of higher education or nonprofit organizations. The Director shall, to the extent practicable, ensure that research centers established under this subparagraph collectively examine as many different agricultural environments as possible, enhance the excellence of existing Foundation programs, and focus on plants of economic importance.

(C) Research partnerships to focus on—

(i) basic genomic research on crops grown in the developing world;

(ii) basic plant genome research that will advance and expedite the development of improved cultivars, including those that are pest-resistant, produce increased yield, reduce the need for fertilizers, herbicides, or pesticides, or have increased tolerance to stress;

(iii) basic research that could lead to the development of technologies to produce pharmaceutical compounds such as vaccines and medications in plants that can be grown in the developing world; and

(iv) research on the impact of plant biotechnology on the social, political, economic, health, and environmental conditions in countries in the developing world.

Competitive, merit-based awards for partnerships under this subparagraph shall be to institutions of higher education, nonprofit organizations, or consortia of such entities that enter into a partnership that shall include one or more research institutions in one or more developing nations, and that may also include for-profit companies involved in plant biotechnology. The Director, by means of outreach, shall encourage inclusion of historically Black colleges and universities, Hispanic-serving institutions, tribally controlled colleges and universities, Alaska Native-serving institutions, and Native Hawaiian-serving institutions in consortia that enter into such partnerships.

(4) INNOVATION PARTNERSHIPS.—An innovation partnerships program to support competitive, merit-reviewed proposals that seek to stimulate innovation at the regional level through new partnerships involving States, regional governmental entities, local governmental entities, industry, academic institutions, and other related organizations in strategically important fields of science and technology.

(5) MATHEMATICS AND SCIENCE EDUCATION PARTNERSHIPS.—The mathematics and science education partnerships program described in section 9.

(6) ROBERT NOYCE SCHOLARSHIP PROGRAM.—The Robert Noyce Scholarship Program described in section 10.

(7) SCIENCE, MATHEMATICS, ENGINEERING, AND TECHNOLOGY TALENT EXPANSION PROGRAM.—(A) A program of competitive, merit-based, multi-year grants for eligible applicants to increase the number of students studying toward and completing associate's or bachelor's degrees in science, mathematics, engineering, and technology, particularly in fields that have faced declining enrollment in recent years.

(B) In selecting projects under this paragraph, the Director shall strive to increase the number of students studying toward and completing baccalaureate degrees, concentrations, or certificates in science, mathematics, engineering, or technology who are individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(C) The types of projects the Foundation may support under this paragraph include those that promote high quality—

(i) interdisciplinary teaching;

(ii) undergraduate-conducted research;

(iii) mentor relationships for students;

(iv) bridge programs that enable students at community colleges to matriculate directly into baccalaureate science, mathematics, engineering, or technology programs;

(v) internships carried out in partnership with industry; and

(vi) innovative uses of digital technologies, particularly at institutions of higher education that serve high numbers or percentages of economically disadvantaged students.

(D)(i) In order to receive a grant under this paragraph, an eligible applicant shall establish targets to increase the number of students studying toward and completing associate's or bachelor's degrees in science, mathematics, engineering, or technology.

(ii) A grant under this paragraph shall be awarded for a period of 5 years, with the final 2 years of funding contingent on the Director's determination that satisfactory progress has been made by the grantee toward meeting the targets established under clause (i).

(iii) In the case of community colleges, a student who transfers to a baccalaureate program, or receives a certificate under an established certificate program, in science, mathematics, engineering, or technology shall be counted toward meeting a target established under clause (i).

(E) For each grant awarded under this paragraph to an institution of higher education, at least 1 principal investigator shall be in a position of administrative leadership at the institution of higher education, and at least 1 principal investigator shall be a faculty member from an academic department included in the work of the project. For each grant awarded to a consortium or partnership, at each institution of higher education participating in the consortium or partnership, at least 1 of the individuals responsible for carrying out activities authorized under this paragraph at that institution shall be in a position of administrative leadership at the institution, and at least 1 shall be a faculty member from an academic department included in the work of the project at that institution.

(F) In this paragraph, the term ''eligible applicant'' means—

(i) an institution of higher education;

(ii) a consortium of institutions of higher education; or

(iii) a partnership between—

(I) an institution of higher education or a consortium of such institutions; and

(II) a nonprofit organization, a State or local government, or a private company, with demonstrated experience and effectiveness in science, mathematics, engineering, or technology education.

(8) SECONDARY SCHOOL SYSTEMIC INITIATIVE.—A program of competitive, merit-based grants for State educational agencies or local educational agencies that supports the planning and implementation of agency-wide secondary school reform initiatives designed to promote scientific and technological literacy, meet the mathematics and science education needs of students at risk of not achieving State student academic achievement standards, reduce the need for basic skill training by employers, and heighten college completion rates through activities, such as—

(A) systemic alignment of secondary school curricula and higher education freshman placement requirements;

(B) development of materials and curricula that support small, theme-oriented schools and learning communities;

(C) implementation of enriched mathematics and science curricula for all secondary school students;

(D) strengthened teacher training in mathematics, science, and reading as it relates to technical and specialized texts;

(E) laboratory improvement and provision of instrumentation as part of a comprehensive program to enhance the quality of mathematics, science, engineering, and technology instruction; or

(F) other secondary school systemic initiatives that enable grantees to leverage private sector funding for mathematics, science, engineering, and technology scholarships.

In awarding grants under this paragraph, the Director shall give priority to agencies that serve high poverty communities.

(9) EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH.—The Experimental Program to Stimulate Competitive Research, established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g), that is designed to enhance—

(A) research in mathematics, science, and engineering throughout the States eligible to participate in the program and the Commonwealth of Puerto Rico;

(B) research infrastructure in the States eligible to participate in the program and the Commonwealth of Puerto Rico; and

(C) the geographic distribution of Federal research and development support.

(10) THE SCIENCE AND ENGINEERING EQUAL OPPORTUNITIES ACT.—A comprehensive program designed to advance the goals of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885 et seq.), including programs to—

(A) provide support to minority-serving institutions; and

(B) ensure that reports required under sections 36 and 37 of such Act are submitted to the—

(i) Committee on Science of the House of Representatives;

(ii) Committee on Health, Education, Labor, and Pensions of the Senate; and

(iii) Committee on Commerce, Science, and Transportation of the Senate.

(11) ASTRONOMICAL RESEARCH AND INSTRUMENTATION.—An astronomical research program to support competitive, merit-reviewed proposals that—

(A) will advance understanding of—

(i) the origins and characteristics of planets, the Sun, other stars, the Milky Way Galaxy, and extragalactic objects (such as clusters of galaxies and quasars); and

(ii) the structure and origin of the universe; and

(B) support related activities such as developing advanced technologies and instrumentation, funding undergraduate and graduate students, and satisfying other instrumentation and research needs.

SEC. 9. MATHEMATICS AND SCIENCE EDUCATION PARTNERSHIPS.

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—(A) The Director shall carry out a program to award grants to institutions of higher education or eligible nonprofit organizations (or consortia of such institutions or organizations) to establish mathematics and science education partnership programs to improve elementary and secondary mathematics and science instruction.

(B) Grants shall be awarded under this subsection on a competitive, merit-reviewed basis.

(2) PARTNERSHIPS.—(A) In order to be eligible to receive a grant under this subsection, an institution of higher education or eligible nonprofit organization (or consortium of such institutions or organizations) shall enter into a partnership with one or more local educational agencies that may also include a State educational agency or one or more businesses.

(B) A participating institution of higher education shall include mathematics, science, or engineering departments in the programs carried out through a partnership under this paragraph.

(3) USES OF FUNDS.—Grants awarded under this subsection shall be used for activities that draw upon the expertise of the partners to improve elementary or secondary education in mathematics or science and that are consistent with State mathematics and science student academic achievement standards, including—

(A) recruiting and preparing students for careers in elementary or secondary mathematics or science education;

(B) offering professional development programs, including summer or academic year institutes or workshops, designed to strengthen the capabilities of mathematics and science teachers;

(C) offering innovative preservice and in-service programs that instruct teachers on using technology more effectively in teaching mathematics and science, including programs that recruit and train undergraduate and graduate students to provide technical support to teachers;

(D) developing distance learning programs for teachers or students, including developing courses, curricular materials, and other resources for the in-service professional development of teachers that are made available to teachers through the Internet;

(E) developing a cadre of master teachers who will promote reform and improvement in schools;

(F) offering teacher preparation and certification programs for professional mathematicians, scientists, and engineers who wish to begin a career in teaching;

(G) developing tools to evaluate activities conducted under this subsection;

(H) developing or adapting elementary school and secondary school mathematics and science curricular materials that incorporate contemporary research on the science of learning;

(I) developing initiatives to increase and sustain the number, quality, and diversity of prekindergarten through grade 12 teachers of mathematics and science, especially in underserved areas;

(J) using mathematicians, scientists, and engineers employed by private businesses to help recruit and train mathematics and science teachers;

(K) developing and offering mathematics or science enrichment programs for students, including after-school and summer programs;

(L) providing research opportunities in business or academia for students and teachers;

(M) bringing mathematicians, scientists, and engineers from business and academia into elementary school and secondary school classrooms; and

(N) any other activities the Director determines will accomplish the goals of this subsection.

(4) MASTER TEACHERS.—Activities carried out in accordance with paragraph (3)(E) shall—

(A) emphasize the training of master teachers who will improve the instruction of mathematics or science in kindergarten through grade 12;

(B) include training in both content and pedagogy; and

(C) provide training only to teachers who will be granted sufficient nonclassroom time to serve as master teachers, as demonstrated by assurances their employing school has

provided to the Director, in such time and such manner as the Director may require.

(5) SCIENCE ENRICHMENT PROGRAMS FOR GIRLS.—Activities carried out in accordance with paragraph (3)(K) and (L) shall include elementary school and secondary school programs to encourage the ongoing interest of girls in science, mathematics, engineering, and technology and to prepare girls to pursue undergraduate and graduate degrees and careers in science, mathematics, engineering, or technology. Funds made available through awards to partnerships for the purposes of this paragraph may support programs for—

(A) encouraging girls to pursue studies in science, mathematics, engineering, and technology and to major in such fields in postsecondary education;

(B) tutoring girls in science, mathematics, engineering, and technology;

(C) providing mentors for girls in person and through the Internet to support such girls in pursuing studies in science, mathematics, engineering, and technology;

(D) educating the parents of girls about the difficulties faced by girls to maintain an interest and desire to achieve in science, mathematics, engineering, and technology, and enlisting the help of parents in overcoming these difficulties; and

(E) acquainting girls with careers in science, mathematics, engineering, and technology and encouraging girls to plan for careers in such fields.

(6) RESEARCH IN SECONDARY SCHOOLS.—Activities carried out in accordance with paragraph (3)(K) may include support for research projects performed by students at secondary schools. Uses of funds made available through awards to partnerships for purposes of this paragraph may include—

(A) training secondary school mathematics and science teachers in the design of research projects for students;

(B) establishing a system for students and teachers involved in research projects funded under this subsection to exchange information about their projects and research results; and

(C) assessing the educational value of the student research projects by such means as tracking the academic performance and choice of academic majors of students conducting research.

(7) STIPENDS.—Grants awarded under this subsection may be used to provide stipends for teachers or students participating in training or research activities that would not be part of their typical classroom activities.

(b) SELECTION PROCESS.—

(1) APPLICATION.—An institution of higher education or an eligible nonprofit organization (or a consortium of such institutions or organizations) seeking funding under subsection (a) shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the partnership and the role that each member will play in implementing the proposal;

(B) a description of each of the activities to be carried out, including—

(i) how such activities will be aligned with State mathematics and science student academic achievement standards and with other activities that promote student achievement in mathematics and science;

(ii) how such activities will be based on a review of relevant research;

(iii) why such activities are expected to improve student performance and strengthen the quality of mathematics and science instruction; and

(iv) any activities that will encourage the interest of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b) in mathematics, science, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields;

(C) a description of the number, size, and nature of any stipends that will be provided to students or teachers and the reasons such stipends are needed;

(D) a description of how the partnership will serve as a catalyst for reform of mathematics and science education programs;

(E) a description of how the partnership will assess its success;

(F) a description of how the partnership will collaborate with the State educational agency to ensure that successful partnership activities may be replicated throughout the State; and

(G) a description of the manner in which the partnership will be continued after assistance under this section ends.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the partnership to carry out effectively the proposed programs;

(B) the extent to which the members of the partnership are committed to making the partnership a central organizational focus;

(C) the degree to which activities carried out by the partnership are based on relevant research and are likely to result in increased student achievement;

(D) the degree to which such activities are aligned with State mathematics and science student academic achievement standards;

(E) the likelihood that the partnership will demonstrate activities that can be widely implemented as part of larger scale reform efforts; and

(F) the extent to which the activities will encourage the interest of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b) in mathematics, science, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields.

(3) AWARDS.—In awarding grants under this section, the Director shall—

(A) give priority to applications in which the partnership includes a high-need local educational agency or a high-need local educational agency in which at least one school does not make adequate yearly progress, as determined pursuant to part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.); and

(B) ensure that, to the extent practicable, a substantial number of the partnerships funded under this section include businesses.

(c) ACCOUNTABILITY AND DISSEMINATION.—

(1) ASSESSMENT REQUIRED.—The Director shall evaluate the program established under subsection (a). At a minimum, such evaluation shall—

(A) use a common set of benchmarks and assessment tools to identify best practices and materials developed and demonstrated by the partnerships; and

(B) to the extent practicable, compare the effectiveness of practices and materials developed and demonstrated by the partnerships authorized under this section with those of partnerships funded by other State or Federal agencies.

(2) DISSEMINATION OF RESULTS.—(A) The results of the evaluation required under paragraph (1) shall be made available to the public and shall be provided to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(B) Materials developed under the program established under subsection (a) that are demonstrated to be effective shall be made widely available to the public.

(3) ANNUAL MEETING.—The Director, in consultation with the Secretary of Education, shall convene an annual meeting of the partnerships participating under this section to foster greater national collaboration.

(4) REPORT ON COORDINATION.—The Director, in consultation with the Secretary of Education, shall provide an annual report to the Committee on Science of the House of Representatives, the Committee on Education and the Workforce of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate describing how the program authorized under this section has been and will be coordinated with the program authorized under part B of title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6601 et seq.). The report under this paragraph shall be submitted along with the President's annual budget request.

(5) TECHNICAL ASSISTANCE.—At the request of an eligible partnership or a State educational agency, the Director shall provide the partnership or agency with technical assistance in meeting any requirements of this section, including providing advice from experts on how to develop—

(A) a quality application for a grant; and

(B) quality activities from funds received from a grant under this section.

SEC. 10. ROBERT NOYCE SCHOLARSHIP PROGRAM.

(a) SCHOLARSHIP PROGRAM.—

(1) IN GENERAL.—The Director shall carry out a program to award grants to institutions of higher education (or consortia of such institutions) to provide scholarships, stipends, and programming designed to recruit and train mathematics and science teachers. Such program shall be known as the ''Robert Noyce Scholarship Program''.

(2) MERIT REVIEW.—Grants shall be provided under this subsection on a competitive, merit-reviewed basis.

(3) USE OF GRANTS.—Grants provided under this section shall be used by institutions of higher education or consortia—

(A) to develop and implement a program to encourage top college juniors and seniors majoring in mathematics, science, and engineering at the grantee's institution to become mathematics and science teachers, through—

(i) administering scholarships in accordance with subsection (c);

(ii) offering programs to help scholarship recipients to teach in elementary schools and secondary schools, including programs that will result in teacher certification or licensing; and

(iii) offering programs to scholarship recipients, both before and after they receive their baccalaureate degree, to enable the recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields; or

(B) to develop and implement a program to encourage science, mathematics, or engineering professionals to become mathematics and science teachers, through—

(i) administering stipends in accordance with subsection (d);

(ii) offering programs to help stipend recipients obtain teacher certification or licensing; and

(iii) offering programs to stipend recipients, both during and after matriculation in

the program for which the stipend is received, to enable recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields.

(b) SELECTION PROCESS.—

(1) APPLICATION.—An institution of higher education or consortium seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the scholarship or stipend program that the applicant intends to operate, including the number of scholarships or the size and number of stipends the applicant intends to award, and the selection process that will be used in awarding the scholarships or stipends;

(B) evidence that the applicant has the capability to administer the scholarship or stipend program in accordance with the provisions of this section; and

(C) a description of the programming that will be offered to scholarship or stipend recipients during and after their matriculation in the program for which the scholarship or stipend is received.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the program;

(B) the extent to which the applicant is committed to making the program a central organizational focus;

(C) the degree to which the proposed programming will enable scholarship or stipend recipients to become successful mathematics and science teachers;

(D) the number and quality of the students that will be served by the program; and

(E) the ability of the applicant to recruit students who would otherwise not pursue a career in teaching.

(c) SCHOLARSHIP REQUIREMENTS.—

(1) IN GENERAL.—Scholarships under this section shall be available only to students who are—

(A) majoring in science, mathematics, or engineering; and

(B) in the last 2 years of a baccalaureate degree program.

(2) SELECTION.—Individuals shall be selected to receive scholarships primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) AMOUNT.—The Director shall establish for each year the amount to be awarded for scholarships under this section for that year, which shall be not less than $7,500 per year, except that no individual shall receive for any year more than the cost of attendance at that individual's institution. Individuals may receive a maximum of 2 years of scholarship support.

(4) SERVICE OBLIGATION.—If an individual receives a scholarship, that individual shall be required to complete, within 6 years after graduation from the baccalaureate degree program for which the scholarship was awarded, 2 years of service as a mathematics or science teacher for each year a scholarship was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(d) STIPENDS.—

(1) IN GENERAL.—Stipends under this section shall be available only to mathematics, science, and engineering professionals who, while receiving the stipend, are enrolled in a program to receive certification or licensing to teach.

(2) SELECTION.—Individuals shall be selected to receive stipends under this section primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) DURATION.—Individuals may receive a maximum of 1 year of stipend support.

(4) SERVICE OBLIGATION.—If an individual receives a stipend under this section, that individual shall be required to complete, within 6 years after graduation from the program for which the stipend was awarded, 2 years of service as a mathematics or science teacher for each year a stipend was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(e) CONDITIONS OF SUPPORT.—As a condition of acceptance of a scholarship or stipend under this section, a recipient shall enter into an agreement with the institution of higher education—

(1) accepting the terms of the scholarship or stipend pursuant to subsections (c) and (g), or subsection (d);

(2) agreeing to provide the awarding institution of higher education with annual certification of employment and up-to-date contact information and to participate in surveys provided by the institution of higher education as part of an ongoing assessment program; and

(3) establishing that any scholarship recipient shall be liable to the United States for any amount that is required to be repaid in accordance with the provisions of subsection (g).

(f) COLLECTION FOR NONCOMPLIANCE.—

(1) MONITORING COMPLIANCE.—An institution of higher education (or consortium thereof) receiving a grant under this section shall, as a condition of participating in the program, enter into an agreement with the Director to monitor the compliance of scholarship and stipend recipients with their respective service requirements.

(2) COLLECTION OF REPAYMENT.—(A) In the event that a scholarship recipient is required to repay the scholarship under subsection (g), the institution shall be responsible for collecting the repayment amounts.

(B) Except as provided in subparagraph (C), any such repayment shall be returned to the Treasury of the United States.

(C) A grantee may retain a percentage of any repayment it collects to defray administrative costs associated with the collection. The Director shall establish a single, fixed percentage that will apply to all grantees.

(g) FAILURE TO COMPLETE SERVICE OBLIGATION.—

(1) GENERAL RULE.—If an individual who has received a scholarship under this section—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which the individual is enrolled, as determined by the Director;

(B) is dismissed from such educational institution for disciplinary reasons;

(C) withdraws from the baccalaureate degree program for which the award was made before the completion of such program;

(D) declares that the individual does not intend to fulfill the service obligation under this section; or

(E) fails to fulfill the service obligation of the individual under this section,

such individual shall be liable to the United States as provided in paragraph (2).

(2) AMOUNT OF REPAYMENT.—(A) If a circumstance described in paragraph (1) occurs before the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to—

(i) the total amount of awards received by such individual under this section; plus

(ii) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 2.

(B) If a circumstance described in paragraph (1)(D) or (E) occurs after the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to the total amount of awards received by such individual under this section minus ½ of the amount of the award received per year for each full year of service completed, plus the interest on such amounts which would be payable if at the time the amounts were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(3) EXCEPTIONS.—The Director may provide for the partial or total waiver or suspension of any service or payment obligation by an individual under this section whenever compliance by the individual with the obligation is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.

(h) DATA COLLECTION.—Institutions or consortia receiving grants under this section shall supply to the Director any relevant statistical and demographic data on scholarship recipients and stipend recipients the Director may request, including information on employment required by subsection (e).

(i) DEFINITIONS.—In this section—

(1) the term ''cost of attendance'' has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll);

(2) the term ''mathematics and science teacher'' means a mathematics, science, or technology teacher at the elementary school or secondary school level;

(3) the term ''mathematics, science, or engineering professional'' means a person who holds a baccalaureate, masters, or doctoral degree in science, mathematics, or engineering and is working in that field or a related area;

(4) the term ''scholarship'' means an award under subsection (c); and

(5) the term ''stipend'' means an award under subsection (d).

SEC. 11. ESTABLISHMENT OF CENTERS FOR RESEARCH ON MATHEMATICS AND SCIENCE LEARNING AND EDUCATION IMPROVEMENT.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—(A) The Director shall award grants to institutions of higher education (or consortia thereof) to establish multidisciplinary Centers for Research on Learning and Education Improvement.

(B) Grants shall be awarded under this paragraph on a competitive, merit-reviewed basis.

(2) PURPOSE.—The purpose of the Centers shall be to conduct and evaluate research in cognitive science, education, and related fields and to develop ways in which the results of such research can be applied in elementary school and secondary school classrooms to improve the teaching of mathematics and science.

(3) FOCUS.—(A) Each Center shall be focused on a different challenge faced by elementary school or secondary school teachers of mathematics and science. In determining the research focus of the Centers, the Director shall consult with the National Academy of Sciences and the Secretary of Education and take into account the extent to which other Federal programs support research on similar questions.

(B) The proposal solicitation issued by the Director shall state the focus of each Center and applicants shall apply for designation as a specific Center.

(C) At least one Center shall focus on developing ways in which the results of research described in paragraph (2) can be applied, duplicated, and scaled up for use in low-performing elementary schools and secondary schools to improve the teaching and student achievement levels in mathematics and science.

(D) To the extent practicable and relevant to its focus, every Center shall include, as part of its research, work designed to quantitatively assess and improve the ways that information technology is used in the teaching of mathematics and science.

(b) SELECTION PROCESS.—

(1) APPLICATION.—An institution of higher education (or a consortium of such institutions) seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the initial research projects that will be undertaken by the Center and the process by which new projects will be identified;

(B) how the Center will work with other research institutions and schools to broaden the national research agenda on learning and teaching;

(C) how the Center will promote active collaboration among physical, biological, and social science researchers;

(D) how the Center will promote active participation by elementary and secondary mathematics and science teachers and administrators; and

(E) how the results of the Center's research can be incorporated into educational practices, and how the Center will assess the success of those practices.

(2) REVIEW OF APPLICATIONS.—In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the research program, including the activities described in paragraph (1)(E);

(B) the experience of the applicant in conducting research on the science of teaching and learning and the capacity of the applicant to foster new multidisciplinary collaborations;

(C) the capacity of the applicant to attract elementary school and secondary school teachers from a diverse array of schools, and with diverse professional experiences, for participation in Center activities; and

(D) the capacity of the applicant to attract and provide adequate support for graduate students to pursue research at the intersection of educational practice and basic research on human cognition and learning.

(3) AWARDS.—The Director shall ensure, to the extent practicable, that the Centers funded under this section conduct research and develop educational practices designed to improve the educational performance of a broad range of students, including individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(c) ANNUAL CONFERENCE.—The Director shall convene an annual meeting of the Centers to foster collaboration among the Centers and to further disseminate the results of the Centers' activities.

(d) COORDINATION.—The Director shall coordinate with the Secretary of Education in—

(1) disseminating the results of the research conducted pursuant to grants awarded under this section to elementary school teachers and secondary school teachers; and

(2) providing programming, guidance, and support to ensure that such teachers—

(A) understand the implications of the research disseminated under paragraph (1) for classroom practice; and

(B) can use the research to improve such teachers' performance in the classroom.

SEC. 12. DUPLICATION OF PROGRAMS.

(a) IN GENERAL.—The Director shall review the education programs of the Foundation that are in operation as of the date of enactment of this Act to determine whether any of such programs duplicate the programs authorized under this Act.

(b) IMPLEMENTATION.—As programs authorized under this Act are implemented, the Director shall—

(1) terminate any duplicative program being carried out by the Foundation or merge the duplicative program into a program authorized under this Act; and

(2) not establish any new program that duplicates a program that has been implemented pursuant to this Act.

(c) REPORT.—

(1) REVIEW.—The Director of the Office of Science and Technology Policy shall review the education programs of the Foundation to ensure compliance with the provisions of this section.

(2) SUBMISSION.—Not later than 1 year after the date of enactment of this Act, and annually thereafter as part of the annual Office of Science and Technology Policy's budget submission to Congress, the Director of the Office of Science and Technology Policy shall complete a report on the review carried out under this subsection and shall submit the report to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate.

SEC. 13. MAJOR RESEARCH INSTRUMENTATION.

(a) REVIEW AND ASSESSMENT.—The Director shall conduct a review and assessment of the major research instrumentation program and, not later than 1 year after the date of enactment of this Act, submit a report of findings and recommendations to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate. The report shall include—

(1) estimates of the needs, by major field of science and engineering and by types of institutions of higher education, for the types of research instrumentation that are eligible for acquisition under the guidelines of the major research instrumentation program;

(2) a description of the distribution of awards and funding levels by year, by major field of science and engineering, and by type of institution of higher education for the program, since the inception of the major research instrumentation program; and

(3) an analysis of the impact of the major research instrumentation program on the research instrumentation needs that were documented in the Foundation's 1994 survey of academic research instrumentation needs.

(b) NATIONAL ACADEMY OF SCIENCES ASSESSMENT ON INTERDISCIPLINARY RESEARCH AND ADVANCED INSTRUMENTATION CENTERS.—

(1) ASSESSMENT.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an arrangement with the National Academy of Sciences to assess the need for an interagency program to establish and support fully equipped, state-of-the-art university-based centers for interdisciplinary research and advanced instrumentation development.

(2) TRANSMITTAL TO CONGRESS.—Not later than 15 months after the date of the enactment of this Act, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate the assessment conducted by the National Academy of Sciences together with the Foundation's reaction to the assessment authorized under paragraph (1).

SEC. 14. MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION PLAN.

(a) PRIORITIZATION OF PROPOSED MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION.—

(1) DEVELOPMENT OF PRIORITIES.—(A) The Director shall—

(i) develop a list indicating by number the relative priority for funding under the major research equipment and facilities construction account that the Director assigns to each project the Board has approved for inclusion in a future budget request; and

(ii) submit the list described in clause (i) to the Board for approval.

(B) The Director shall update the list prepared under subparagraph (A) each time the Board approves a new project that would receive funding under the major research equipment and facilities construction account, as necessary to prepare reports under paragraph (2), and, from time to time, submit any updated list to the Board for approval.

(2) ANNUAL REPORT.—Not later than 90 days after the date of enactment of this Act, and not later than each June 15 thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing—

(A) the most recent Board-approved priority list developed under paragraph (1)(A);

(B) a description of the criteria used to develop such list; and

(C) a description of the major factors for each project that determined the ranking of such project on the list, based on the application of the criteria described pursuant to subparagraph (B).

(3) CRITERIA.—The criteria described pursuant to paragraph (2)(B) shall include, at a minimum—

(A) scientific merit;

(B) broad societal need and probable impact;

(C) consideration of the results of formal prioritization efforts by the scientific community;

(D) readiness of plans for construction and operation;

(E) the applicant's management and administrative capacity of large research facilities;

(F) international and interagency commitments; and

(G) the order in which projects were approved by the Board for inclusion in a future budget request.

(b) FACILITIES PLAN.—

(1) IN GENERAL.—Section 201(a)(1) of the National Science Foundation Authorization

Act of 1998 (42 U.S.C. 1862*l*(a)(1)) is amended to read as follows:

''(1) IN GENERAL.—The Director shall prepare, and include as part of the Foundation's annual budget request to Congress, a plan for the proposed construction of, and repair and upgrades to, national research facilities, including full life-cycle cost information.''.

(2) CONTENTS OF PLAN.—Section 201(a)(2) of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862*l*(a)(2)) is amended—

(A) in subparagraph (A), by striking ''(1);'' and inserting ''(1), including costs for instrumentation development;'';

(B) in subparagraph (B), by striking ''and'' after the semicolon;

(C) in subparagraph (C), by striking ''construction.'' and inserting ''construction;''; and

(D) by adding at the end the following:

''(D) for each project funded under the major research equipment and facilities construction account—

''(i) estimates of the total project cost (from planning to commissioning); and

''(ii) the source of funds, including Federal funding identified by appropriations category and non-Federal funding;

''(E) estimates of the full life-cycle cost of each national research facility;

''(F) information on any plans to retire national research facilities; and

''(G) estimates of funding levels for grants supporting research that will be conducted using each national research facility.''.

(3) DEFINITION.—Section 2 of the National Science Foundation Authorization Act of 1998 (42 U.S.C. 1862k note) is amended—

(A) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively; and

(B) by inserting after paragraph (2) the following:

''(3) FULL LIFE-CYCLE COST.—The term 'full life-cycle cost' means all costs of planning, development, procurement, construction, operations and support, and shut-down costs, without regard to funding source and without regard to what entity manages the project or facility involved.''.

(c) PROJECT MANAGEMENT.—No national research facility project funded under the major research equipment and facilities construction account shall be managed by an individual whose appointment to the Foundation is temporary.

(d) BOARD APPROVAL OF MAJOR RESEARCH EQUIPMENT AND FACILITIES PROJECTS.—

(1) IN GENERAL.—The Board shall explicitly approve any project to be funded out of the major research equipment and facilities construction account before any funds may be obligated from such account for such project.

(2) REPORT.—Not later than September 15 of each fiscal year, the Board shall report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Science of the House of Representatives on the conditions of any delegation of authority under section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) that relates to funds appropriated for any project in the major research equipment and facilities construction account.

(e) NATIONAL ACADEMY OF SCIENCES STUDY ON MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION.—

(1) STUDY.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an arrangement with the National Academy of Sciences to perform a study on setting priorities for a diverse array of disciplinary and interdisciplinary Foundation-sponsored large research facility projects.

(2) TRANSMITTAL TO CONGRESS.—Not later than 15 months after the date of the enactment of this Act, the Director shall transmit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, the study conducted by the National Academy of Sciences together with the Foundation's reaction to the study authorized under paragraph (1).

SEC. 15. ADMINISTRATIVE AMENDMENTS.

(a) BOARD MEETINGS.—

(1) IN GENERAL.—Section 4(e) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(e)) is amended by striking the second and third sentences and inserting ''The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, which in no case shall be less than one-half plus one of the confirmed members of the Board.''.

(2) OPEN MEETINGS.—The Board and all of its committees, subcommittees, and task forces (and any other entity consisting of members of the Board and reporting to the Board) shall be subject to section 552b of title 5, United States Code.

(3) COMPLIANCE AUDIT.—The Inspector General of the Foundation shall conduct an annual audit of the compliance by the Board with the requirements described in paragraph (2). The audit shall examine the proposed and actual content of closed meetings and determine whether the closure of the meetings was consistent with section 552b of title 5, United States Code.

(4) REPORT.—Not later than February 15 of each year, the Inspector General of the Foundation shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate the audit required under paragraph (3) along with recommendations for corrective actions that need to be taken to achieve fuller compliance with the requirements described in paragraph (2), and recommendations on how to ensure public access to the Board's deliberations.

(b) CONFIDENTIALITY OF CERTAIN INFORMATION.—Section 14(i) of the National Science Foundation Act of 1950 (42 U.S.C. 1873(i)) is amended to read as follows:

''(i)(1)(A) Information supplied to the Foundation or a contractor of the Foundation in survey forms, questionnaires, or similar instruments for purposes of section 3(a)(5) or (6) by an individual, an industrial or commercial organization, or an educational, academic, or other nonprofit institution when the institution has received a pledge of confidentiality from the Foundation, shall not be disclosed to the public unless the information has been transformed into statistical or abstract formats that do not allow for the identification of the supplier.

''(B) Information that has not been transformed into formats described in subparagraph (A) may be used only for statistical or research purposes.

''(C) The identities of individuals, organizations, and institutions supplying information described in subparagraph (A) may not be disclosed to the public.

''(2) In support of functions authorized by section 3(a)(5) or (6), the Foundation may designate, at its discretion, authorized persons, including employees of Federal, State, or local agencies or instrumentalities (including local educational agencies) and employees of private organizations, to have access, for statistical or research purposes only, to information collected pursuant to section 3(a)(5) or (6) that allows for the identification of the supplier. No such person may—

''(A) publish information collected pursuant to section 3(a)(5) or (6) in such a manner that either an individual, an industrial or commercial organization, or an educational, academic, or other nonprofit institution that has received a pledge of confidentiality from the Foundation can be specifically identified;

''(B) permit anyone other than individuals authorized by the Foundation to examine data that allows for such identification relating to an individual, an industrial or commercial organization, or an academic, educational, or other nonprofit institution that has received a pledge of confidentiality from the Foundation; or

''(C) knowingly and willfully request or obtain any nondisclosable information described in paragraph (1) from the Foundation under false pretenses.

''(3) Violation of this subsection is punishable by a fine of not more than $10,000, imprisonment for not more than 5 years, or both.''.

(c) APPOINTMENT.—Section 4(g) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(g)) is amended by striking the second sentence and inserting ''Such staff shall be appointed by the Chairman and assigned at the direction of the Board.''.

(d) SCHOLARSHIP ELIGIBILITY.—The Director shall not exclude part-time students from eligibility for scholarships under the Computer Science, Engineering, and Mathematics Scholarship program.

SEC. 16. SCIENCE AND ENGINEERING EQUAL OPPORTUNITIES ACT AMENDMENTS.

Section 32 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885) is amended—

(1) in subsection (a), by striking ''backgrounds.'' and inserting ''backgrounds, including persons with disabilities.''; and

(2) in subsection (b)—

(A) by inserting '', including persons with disabilities,'' after ''backgrounds''; and

(B) by striking ''and minorities'' each place the term appears and inserting '', minorities, and persons with disabilities''.

SEC. 17. UNDERGRADUATE EDUCATION REFORM.

(a) IN GENERAL.—The Director shall award grants, on a competitive, merit-reviewed basis, to institutions of higher education to expand previously implemented reforms of undergraduate science, mathematics, engineering, or technology education that have been demonstrated to have been successful in increasing the number and quality of students studying toward and completing associate's or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) USES OF FUNDS.—Activities supported by grants under this section may include—

(1) expansion of successful reform efforts beyond a single course or group of courses to achieve reform within an entire academic unit;

(2) expansion of successful reform efforts beyond a single academic unit to other science, mathematics, engineering, or technology academic units within an institution;

(3) creation of multidisciplinary courses or programs that formalize collaborations for the purpose of improved student instruction and research in science, mathematics, engineering, and technology;

(4) expansion of undergraduate research opportunities beyond a particular laboratory, course, or academic unit to engage multiple academic units in providing multidisciplinary research opportunities for undergraduate students;

(5) expansion of innovative tutoring or mentoring programs proven to enhance student recruitment or persistence to degree completion in science, mathematics, engineering, or technology;

(6) improvement of undergraduate science, mathematics, engineering, and technology education for nonmajors, including education majors; and

(7) implementation of technology-driven reform efforts, including the installation of technology to facilitate such reform, that directly impact undergraduate science, mathematics, engineering, or technology instruction or research experiences.

(c) SELECTION PROCESS.—

(1) APPLICATIONS.—An institution of higher education seeking a grant under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the proposed reform effort;

(B) a description of the previously implemented reform effort that will serve as the basis for the proposed reform effort and evidence of success of that previous effort, including data on student recruitment, persistence to degree completion, and academic achievement;

(C) evidence of active participation in the proposed project by individuals who were central to the success of the previously implemented reform effort; and

(D) evidence of institutional support for, and commitment to, the proposed reform effort, including a description of existing or planned institutional policies and practices regarding faculty hiring, promotion, tenure, and teaching assignment that reward faculty contributions to undergraduate education equal to, or greater than, scholarly scientific research.

(2) REVIEW OF APPLICATIONS.—In evaluating applications submitted under paragraph (1), the Director shall consider at a minimum—

(A) the evidence of past success in implementing undergraduate education reform and the likelihood of success in undertaking the proposed expanded effort;

(B) the extent to which the faculty, staff, and administrators of the institution are committed to making the proposed institutional reform a priority of the participating academic unit;

(C) the degree to which the proposed reform will contribute to change in institutional culture and policy such that a greater value is placed on faculty engagement in undergraduate education, as evidenced through promotion and tenure policies; and

(D) the likelihood that the institution will sustain or expand the reform beyond the period of the grant.

(3) GRANT DISTRIBUTION.—The Director shall ensure, to the extent practicable, that grants awarded under this section are made to a variety of types of institutions of higher education.

SEC. 18. REPORTS.

(a) GRANT SIZE AND DURATION.—Not later than 6 months after the date of enactment of this Act, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report describing the impact that increasing the average grant size and duration would have on minority-serving institutions and on institutions located in States where the Foundation's Experimental Program to Stimulate Competitive Research (established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g)) is carrying out activities.

(b) FACULTY.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an arrangement with the National Academy of Sciences to assess gender differences in the careers of science and engineering faculty. This study shall build on the Academy's work on gender differences in the carriers of doctoral scientists and engineers and examine issues such as faculty hiring, promotion, tenure, and allocation of resources including laboratory space. Upon completion, the results of this study shall be transmitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(c) GRANT FUNDING.—Not later than 3 months after the date of enactment of this Act, the Director shall enter into an agreement with an appropriate party to assess gender differences in the distribution of external Federal research and development funding. This study shall examine differences in amounts requested and awarded, by gender, in major Federal external grant programs. Upon completion, the results of this study shall be transmitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(d) STUDY OF BROADBAND NETWORK ACCESS FOR SCHOOLS AND LIBRARIES.—

(1) REPORT TO CONGRESS.—The Director shall conduct a study of the issues described in paragraph (3), and not later than 1 year after the date of the enactment of this Act, transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report including recommendations to address those issues. Such report shall be updated annually for 4 additional years.

(2) CONSULTATION.—In preparing the reports under paragraph (1), the Director shall consult with Federal agencies and educational entities as the Director considers appropriate.

(3) ISSUES TO BE ADDRESSED.—The reports shall—

(A) identify the availability of high-speed, large bandwidth capacity access to different demographic groups served by elementary schools, secondary schools, and libraries in the United States;

(B) identify how the provision of high-speed, large bandwidth capacity access to the Internet to such schools and libraries can be effectively utilized within each school and library;

(C) consider the effect that specific or regional circumstances may have on the ability of such institutions to acquire high-speed, large bandwidth capacity access to achieve universal connectivity as an effective tool in the education process; and

(D) include options and recommendations to address the challenges and issues identified in the reports.

(e) MINORITY-SERVING INSTITUTION FUNDING.—

(1) ANNUAL REPORTING REQUIRED.—The Director shall submit an annual report, along with the President's annual budget request, to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the amount of funding awarded by the Foundation to minority-serving institutions, including funding received as members of consortia. The report shall include information on such funding to minority-serving institutions—

(A) expressed as a percentage of funding to all institutions of higher education for each appropriations account within the Foundation's budget; and

(B) for the preceding 10 years.

(2) REPORT ON WAYS TO IMPROVE FUNDING.—Within one year after the date of enactment of this Act, the Director shall submit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report on recommendations on how the Foundation can improve funding to minority-serving institutions.

SEC. 19. EVALUATIONS.

(a) EDUCATION.—

(1) IN GENERAL.—The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall evaluate the effectiveness of all undergraduate science, mathematics, engineering, or technology education activities supported by the Foundation in increasing the number and quality of students, including individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b) studying toward and completing associate's or baccalaureate degrees in science, mathematics, engineering, and technology. In conducting the evaluation, the Director shall consider information on—

(A) the number of students enrolled in undergraduate science, mathematics, engineering, and technology programs;

(B) student academic achievement, including quantifiable measurements of students' mastery of content and skills;

(C) persistence to degree completion, including students who transfer from science, mathematics, engineering, and technology programs to programs in other academic disciplines; and

(D) placement during the first year after degree completion in post-graduate education or career pathways.

(2) ASSESSMENT BENCHMARKS AND TOOLS.—The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall establish a common set of assessment benchmarks and tools, and shall enable every Foundation-sponsored project to incorporate the use of these benchmarks and tools in their project-based assessment activities.

(3) REPORTS TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act, and once every 3 years thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing the results of evaluations under paragraph (1).

(b) AWARDS.—Notwithstanding any other provision of this Act, the Director shall annually evaluate a random sample of grants, contracts, or other awards made pursuant to this Act.

(c) DISSEMINATION.—The Director shall—

(1) provide for the dissemination of the results of the evaluations conducted pursuant to this section to the public; and

(2) provide notice to the public that such evaluations are available.

SEC. 20. REPORT BY COMMITTEE ON EQUAL OPPORTUNITIES IN SCIENCE AND ENGINEERING.

As part of the first report required by section 36(e) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885c(e)) transmitted to Congress after the date of enactment of this Act, the Committee on Equal Opportunities in Science and Engineering shall include—

(1) a summary of its findings over the previous 10 years;

(2) a description of past and present policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities in science, mathematics, and engineering fields, including activities in support of minority-serving institutions; and

(3) an assessment of the trends in participation in Foundation activities, and an assessment of the success of Foundation policies and activities, along with proposals for new strategies or the broadening of existing successful strategies toward facilitating the goals of that Act.

SEC. 21. ADVANCED TECHNOLOGICAL EDUCATION PROGRAM.

(a) CORE SCIENCE AND MATHEMATICS COURSES.—Section 3(a) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i(a)) is amended—

(1) by inserting '', and to improve the quality of their core education courses in science and mathematics'' after ''education in advanced-technology fields'';

(2) in paragraph (1) by inserting ''and in core science and mathematics courses'' after ''advanced-technology fields''; and

(3) in paragraph (2) by striking ''in advanced-technology fields'' and inserting ''who provide instruction in science, mathematics, and advanced-technology fields''.

(b) ARTICULATION PARTNERSHIPS.—Section 3(c)(1)(B) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i(c)(1)(B)) is amended—

(1) by striking ''and'' at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting a semicolon; and

(3) by adding after clause (ii) the following new clauses:

''(iii) provide students with research experiences at bachelor's-degree-granting institutions participating in the partnership, including stipend support for students participating in summer programs; and

''(iv) provide faculty mentors for students participating in activities under clause (iii), including summer salary support for faculty mentors.''.

(c) NATIONAL SCIENCE FOUNDATION REPORT.—Within 6 months after the date of the enactment of this Act, the Director shall transmit a report to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on—

(1) efforts by the Foundation and awardees under the program carried out under section 3 of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i) to disseminate information about the results of projects;

(2) the effectiveness of national centers of scientific and technical education established under section 3(b) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i(b)) in serving as national and regional clearinghouses of information and models for best practices in undergraduate science, mathematics, and technology education; and

(3) efforts to satisfy the requirement of section 3(f)(4) of the Scientific and Advanced-Technology Act of 1992 (42 U.S.C. 1862i(f)(4)).

SEC. 22. REPORT ON FOUNDATION BUDGETARY AND PROGRAMMATIC EXPANSION.

The Board shall prepare a report to address and examine the Foundation's budgetary and programmatic growth provided for by this Act. The report shall be submitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate within one year after the date of the enactment of this Act and shall include—

(1) recommendations on how the increased funding should be utilized;

(2) an examination of the projected impact that the budgetary increases will have on the Nation's scientific and technological workforce;

(3) a description of new or expanded programs that will enable institutions of higher education to expand their participation in Foundation-funded activities;

(4) an estimate of the national scientific and technological research infrastructure needed to adequately support the Foundation's increased funding and additional programs; and

(5) a description of the impact the budgetary increases provided under this Act will have on the size and duration of grants awarded by the Foundation.

SEC. 23. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Foundation and the National Aeronautics and Space Administration shall jointly establish an Astronomy and Astrophysics Advisory Committee (in this section referred to as the ''Advisory Committee'').

(b) DUTIES.—The Advisory Committee shall—

(1) assess, and make recommendations regarding, the coordination of astronomy and astrophysics programs of the Foundation and the National Aeronautics and Space Administration;

(2) assess, and make recommendations regarding, the status of the activities of the Foundation and the National Aeronautics and Space Administration as they relate to the recommendations contained in the National Research Council's 2001 report entitled ''Astronomy and Astrophysics in the New Millennium'', and the recommendations contained in subsequent National Research Council reports of a similar nature; and

(3) not later than March 15 of each year, transmit a report to the Director, the Administrator of the National Aeronautics and Space Administration, and the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the Advisory Committee's findings and recommendations under paragraphs (1) and (2).

(c) MEMBERSHIP.—The Advisory Committee shall consist of 13 members, none of whom shall be a Federal employee, including—

(1) 5 members selected by the Director;

(2) 5 members selected by the Administrator of the National Aeronautics and Space Administration; and

(3) 3 members selected by the Director of the Office of Science and Technology Policy.

(d) SELECTION PROCESS.—Initial selections under subsection (c) shall be made within 3 months after the date of the enactment of this Act. Vacancies shall be filled in the same manner as provided in subsection (c).

(e) CHAIRPERSON.—The Advisory Committee shall select a chairperson from among its members.

(f) COORDINATION.—The Advisory Committee shall coordinate with the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities.

(g) COMPENSATION.—The members of the Advisory Committee shall serve without compensation, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(h) MEETINGS.—The Advisory Committee shall convene, in person or by electronic means, at least 4 times a year.

(i) QUORUM.—A majority of the members serving on the Advisory Committee shall constitute a quorum for purposes of conducting the business of the Advisory Committee.

(j) DURATION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

SEC. 24. MINORITY-SERVING INSTITUTIONS UNDERGRADUATE PROGRAM.

(a) IN GENERAL.—The Director is authorized to establish a new program to award grants on a competitive, merit-reviewed basis to Hispanic-serving institutions, Alaska Native-serving institutions, Native Hawaiian-serving institutions, and other institutions of higher education serving a substantial number of minority students to enhance the quality of undergraduate science, mathematics, and engineering education at such institutions and to increase the retention and graduation rates of students pursuing associate's or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) PROGRAM COMPONENTS.—Grants awarded under this section shall support—

(1) activities to improve courses and curriculum in science, mathematics, and engineering;

(2) faculty development;

(3) stipends for undergraduate students participating in research; and

(4) other activities consistent with subsection (a), as determined by the Director.

(c) PROGRAM COORDINATION.—This program shall be coordinated with and in addition to the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

(d) INSTRUMENTATION.—Funding for instrumentation is an allowed use of grants awarded under this section and under the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

SEC. 25. STUDY ON RESEARCH AND DEVELOPMENT FUNDING DATA DISCREPANCIES.

(a) STUDY.—The Director, in consultation with the Director of the Office of Management and Budget and the heads of other Federal agencies, shall enter into agreement with the National Academy of Sciences to conduct a comprehensive study to determine the source of discrepancies in Federal reports on obligations and actual expenditures of Federal research and development funding.

(b) CONTENTS.—The study shall—

(1) examine the relevance and accuracy of reporting classifications and definitions used in the reports described in subsection (a);

(2) examine whether the classifications and definitions are used consistently across Federal agencies for data gathering;

(3) examine whether and how Federal agencies use reports described in subsection (a), and describe any other sources of similar data used by those agencies;

(4) recommend alternatives for modifications to the current reporting process and system that would—

(A) accommodate emerging fields of science and changing practices in the conduct of research and development;

(B) minimize, to the extent possible, the burden imposed on the reporters of these data;

(C) increase the consistency of application of the system across the Federal agencies including the Office of Management and Budget and the Foundation;

(D) encourage the use of new technologies to increase accuracy, timeliness, and consistency of the reported data between the agencies and the research performers; and

(E) overcome systemic shortfalls; and

(5) recommend an implementation timeline for the modifications recommended under paragraph (4), and recommend specific responsibilities for the program and budget offices in the agencies, taking into consideration required changes to the current computer systems and processes used by the agencies.

(c) SUBMISSION.—The Director shall submit a report on the results of the study to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate within one year after the date of enactment of this Act.

(d) IMPLEMENTATION.—Within 6 months after the completion of the study required by subsection (a), the Director of the Office of Science and Technology Policy shall submit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a plan for implementation of the recommendations of the study.

SEC. 26. PLANNING GRANTS.

The Director is authorized to accept planning proposals from applicants who are within .075 percentage points of the current eligibility level for the Experimental Program to Stimulate Competitive Research. Such proposals shall be reviewed by the Foundation to determine their merit for support under the Experimental Program to Stimulate Competitive Research or any other appropriate program.

SA 4959. Mr. REID (for Mr. KENNEDY (for himself, Mr. GREGG, and Mr. HOLLINGS)) proposed an amendment to the bill H.R. 4664, An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes; as follows:

Amend the title so as to read: ''An Act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation and for other purposes.''.

SA 4960. Mrs. CLINTON (for herself, Mr. FITZGERALD, Ms. CANTWELL, and Mr. SPECTER) proposed an amendment to the bill H.R. 3529, to provide tax incentives for economic recovery and assistance to displaced workers; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. Section 114 of Public Law 107–229 is amended by striking ''the date specified in section 107(c) of this joint resolution'' and inserting ''March 31, 2003''.

Section. 2. EXTENSION OF THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.

(a) In general.—Section 208 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

''SEC. 208. APPLICABILITY.

''(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

''(1) beginning after the date on which such agreement is entered into; and

''(2) ending before April 1, 2003.

''(b) TRANSITION FOR AMOUNT REMAINING IN ACCOUNT.—

''(1) IN GENERAL.—Subject to paragraphs (2) and (3), in the case of an individual who has amounts remaining in an account established under section 203 as of March 29, 2003, temporary extended unemployment compensation shall continue to be payable to such individual from such amounts for any week beginning after such date for which the individual meets the eligibility requirements of this title.

''(2) NO AUGMENTATION AFTER MARCH 29, 2003.—If the account of an individual is exhausted after March 29, 2003, then section 203(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period (as determined under paragraph (2) of such section).

''(3) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after June 28, 2003.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 21).

SA 4961. Mr. REID (for Mr. BAUCUS) proposed an amendment to the bill H.R. 5557, to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services and Foreign Service in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes; as follows:

On page 10, strike line 10, and insert the following:

SEC. 8. CLARIFICATION RELATING TO EXCEPTION FROM ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS, ETC. ON ACCOUNT OF ATTENDANCE AT MILITARY ACADEMY.

(a) IN GENERAL.—Subparagraph (B) of section 530(d)(4) of the Internal Revenue Code of 1986 (relating to exceptions from additional tax for distributions not used for educational purposes) is amended by striking ''or'' at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

''(iv) made on account of the attendance of the account holder at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect for taxable years beginning after December 31, 2002.

SEC. 9. SUSPENSION OF TAX-EXEMPT STATUS OF DESIGNATED TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—Section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) SUSPENSION OF TAX-EXEMPT STATUS OF DESIGNATED TERRORIST ORGANIZATIONS.—

''(1) IN GENERAL.—The exemption from tax under subsection (a) with respect to any organization shall be suspended during any period in which the organization is a designated terrorist organization.

''(2) DESIGNATED TERRORIST ORGANIZATION.—For purposes of this subsection, the term 'designated terrorist organization' means an organization which—

''(A) is designated as a terrorist organization in or pursuant to an Executive order, or otherwise designated, under the authority of—

''(i) section 212(a)(3) or 219 of the Immigration and Nationality Act,

''(ii) the International Emergency Economic Powers Act, or

''(iii) section 5 of the United Nations Participation Act, or

''(B) is designated in or pursuant to an Executive order as supporting terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

''(3) DENIAL OF DEDUCTION.—No deduction shall be allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for any contribution to an organization during the period such organization is a designated terrorist organization.

''(4) DENIAL OF ADMINISTRATIVE OR JUDICIAL CHALLENGE OF SUSPENSION OR DENIAL OF DEDUCTION.—Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation described in paragraph (2), or a denial of a deduction under paragraph (3) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

''(5) CREDIT OR REFUND IN CASE OF ERRONEOUS DESIGNATION.—

''(A) IN GENERAL.—If a designation of an organization pursuant to 1 or more of the provisions of law described in paragraph (2) is determined to be erroneous pursuant to such law and the erroneous designation results in an overpayment of income tax for any taxable year with respect to such organization, credit or refund (with interest) with respect to such overpayment shall be made.

''(B) WAIVER OF LIMITATIONS.—If credit or refund of any overpayment of tax described in subparagraph (A) is prevented at any time before the close of the 1-year period beginning on the date of the determination of such credit or refund by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''.

(b) NOTICE OF SUSPENSIONS.—If the tax exemption of any organization is suspended under section 501(p) of the Internal Revenue Code of 1986 (as added by subsection (a)), the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 10. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT TRAVEL EXPENSES OF NATIONAL GUARD AND RESERVE MEMBERS.

(a) DEDUCTION ALLOWED.—Section 162 of the Internal Revenue Code of 1986 (relating to certain trade or business expenses) is amended by redesignating subsection (p) as subsection (q) and inserting after subsection (o) the following new subsection:

''(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such services.''.

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ELECTS TO ITEMIZE.—Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following new subparagraph:

''(E) CERTAIN EXPENSES OF MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—The deductions allowed by section 162 which consist of expenses, not in excess of $1,500, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

SEC. 11. EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

''SEC. 7527. INTERNAL REVENUE SERVICE USER FEES.

''(a) GENERAL RULE.—The Secretary shall establish a program requiring the payment of user fees for—

''(1) requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters, and

''(2) other similar requests.

''(b) PROGRAM CRITERIA.—

''(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

''(A) shall vary according to categories (or subcategories) established by the Secretary,

''(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

''(C) shall be payable in advance.

''(2) EXEMPTIONS, ETC.—

''(A) IN GENERAL.—The Secretary shall provide for such exemptions (and reduced fees) under such program as the Secretary determines to be appropriate.

''(B) EXEMPTION FOR CERTAIN REQUESTS REGARDING PENSION PLANS.—The Secretary shall not require payment of user fees under such program for requests for determination letters with respect to the qualified status of a pension benefit plan maintained solely by 1 or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

''(i) made after the later of—

''(I) the fifth plan year the pension benefit plan is in existence, or

''(II) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years, or

''(ii) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

''(C) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (B)—

''(i) PENSION BENEFIT PLAN.—The term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

''(ii) ELIGIBLE EMPLOYER.—The term 'eligible employer' means an eligible employer (as defined in section 408(p)(2)(C)(i)(I)) which has at least 1 employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under subparagraph (B) shall be made as of the date of the request described in such subparagraph.

''(iii) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subparagraph (B) applies shall not be taken into account.

''(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

''Category	Average Fee
Employee plan ruling and opinion ..	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination.	$275
Chief counsel ruling	$200.

''(c) TERMINATION.—No fee shall be imposed under this section with respect to requests made after September 30, 2012.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 7527. Internal Revenue Service user fees.''.

(2) Section 10511 of the Revenue Act of 1987 is repealed.

(3) Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

(c) LIMITATIONS.—Notwithstanding any other provision of law, any fees collected pursuant to section 7527 of the Internal Revenue Code of 1986, as added by subsection (a), shall not be expended by the Internal Revenue Service unless provided by an appropriations Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 12. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) of the Internal Revenue Code of 1986 (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) of such Code (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 of the Internal Revenue Code of 1986 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 13. PROTECTION OF SOCIAL SECURITY.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, November 14, 2002 at 1 p.m. to hold a Members' Briefing.

Agenda

Briefers:

The Honorable Christina Rocca, Assistant Secretary for South Asian Affairs, Department of State.

The Hon. John S. Wolf, Assistant Secretary for Nonproliferation, Department of State.

Representative from the Central Intelligence Agency to be announced.

THE PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, November 14, 2002 at 2:30 to hold a nomination hearing.

Agenda

Nominee:

Mrs. Mary Carlin Yates, of Oregon, to be Ambassador to the Republic of Ghana.

THE PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, November 14, 2002 at 10:00 a.m. in Dirksen Room 226.

Tentative Agenda

I. Nomination:

Dennis Shedd to be a U.S. Circuit Court Judge for the Fourth Circuit.

Michael McConnell to be a U.S. Circuit Court Judge for the Tenth Circuit.

To be a U.S. Attorney: Kevin J. O'Connor for the District of Connecticut.

II. Bills:

S. 2480, Law Enforcement Officers Safety Act of 2002 [Leahy/Hatch/Thurmond/Grassley McConnell/Feinstein/DeWine/Kyl/Sessions/Brownback/Edwards/Cantwell].

S. 1655, Captive Exotic Animal Protection Act of 2001 [Biden/Kennedy/Kohl/Feinstein/Feingold/Schumer/Durbin/Cantwell].